Supreme Court, U.S.
FILED
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No. 15-145

IN THE

Supreme Court of the United States

HUSKY INTERNATIONAL ELECTRONICS, INC.,
Petitioner,

v.

DANIEL LEE RITZ, JR.,
Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 30, 2015
CERTIORARI GRANTED NOVEMBER 6, 2015

TABLE OF CONTENTS

Page

Docket Entries, *Husky Electronics International, Inc. v. Ritz*, No. 14-20526 (5th Cir.) 1

Docket Entries, *Husky Electronics International, Inc. v. Ritz*, No. 4:11-cv-03020 (S.D. Tex) 9

Docket Entries, *Husky Electronics International, Inc. v. Ritz*, Adversary Proceeding No. 10-03156 (Bankr. S.D. Tex) 15

Judgment, *Husky Electronics International, Inc. v. Ritz*, No. 14-20526 (5th Cir. 2015) 35

Judgment, *Husky Electronics International, Inc. v. Ritz*, Adversary Proceeding No. 10-03156 (Bankr. S.D. Tex 2011) 36

Testimony of Nicholas Davis (Feb. 2, 2011) 38

Testimony of Daniel L. Ritz, Jr. (Feb. 2, 2011) 41

Testimony of Daniel L. Ritz, Jr. (Feb. 3, 2011) 48

Testimony of Daniel L. Ritz, Jr. (Feb. 11, 2011) 56

Testimony of Nancy Knox Finney (Feb. 3, 2011) 66

Testimony of James David Rogers (Feb. 3, 2011) 69

Testimony of Richard Hollan (Feb. 3, 2011) 72

Trial Day 3 (Feb. 10, 2011) 74

Testimony of Marlin Williford (Feb. 11, 2011) 77

Closing Argument (Feb. 11, 2011) 79

Status Conference (July 13, 2011) 81

IIM Chrysalis Transfer Recap Sheet (Exhibit 26.1) 85

Adversary Complaint 88

Answer 99

Joint Pretrial Statement 108

Excerpt of Husky's Statement of Contested Legal Issues 124

Excerpt of Husky's Reply Brief on Appeal to the District Court 127

General Docket
United States Court of Appeals for the 5th Circuit

Court of Appeals Docket #: 14-20526 Husky International Elec, Inc. v. Daniel Ritz **Appeal From:** Southern District of Texas, Houston **Fee Status:** Fee Paid	**Docketed:** 08/13/2014 **Termed:** 05/22/2015

Case Type Information:
1) Bankruptcy
2) District Court
3)

Originating Court Information:
District: 0541-4 : 4:11-CV-3020
Originating Judge: Melinda Harmon, U.S. District Judge
Date Filed: 08/18/2011

Date NOA Filed:	**Date Rec'd COA:**
08/12/2014	08/12/2014

Prior Cases:
None
Current Cases:
None

Panel Assignment:
Panel: CES CDK JWE

Date of Hearing:	**Date of Decision:**	**Date Completed:**
04/07/2015	05/22/2015	05/22/2015

In the Matter of: DANIEL L. RITZ, JR., also known as Bo Ritz Debtor	
HUSKY INTERNATIONAL ELECTRONICS, INCORPORATED Appellant	Jeffrey Lee Dorrell Direct: 713-522-9444 Email: jdorrell@hanszenlaporte.com Fax: 713-524-2580 [COR LD NTC Retained] Hanszen & Laporte Suite 850 11767 Katy Freeway Houston, TX 77079
v.	
DANIEL L. RITZ, JR. Appellee	William D. Weber, Esq. Direct: 713-789-3300 Email: wdw@weberlaw.com Fax: 713-893-6004 [COR LD NTC Retained] Weber Law Firm, P.C. Suite 220 6666 Harwin Drive Houston, TX 77036-2251

In the Matter of: DANIEL L. RITZ, JR., also known as Bo Ritz Debtor
HUSKY INTERNATIONAL ELECTRONICS, INCORPORATED Appellant v. DANIEL L. RITZ, JR. Appellee

08/13/2014	BANKRUPTCY CASE docketed. NOA filed by Appellant Husky International Electronics, Incorporated [14-20526] (MAS)
08/21/2014	INITIAL CASE CHECK by Attorney Advisor complete, Action: Case OK to Process. [7711537-2] Initial AA Check Due satisfied. Electronic ROA due on 09/05/2014. [14-20526] (MAS)
09/03/2014	ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? Yes. Electronic ROA deadline satisfied. [14-20526] (SMH)
	* * *
11/17/2014	APPELLANT'S BRIEF FILED Brief NOT Sufficient as it requires an Appearance Form from counsel signing the brief. Additionally the

Brief requires corrected caption.

Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0 A/Pet's Brief deadline satisfied. Sufficient Brief due on 12/02/2014 for Appellant Husky International Electronics, Incorporated. [14-20526]

REVIEWED AND/OR EDITED - The original text prior to review appeared as follows:

APPELLANT'S BRIEF FILED by Husky International Electronics, Incorporated. *11/17/2014* Date of service: 11/17/2014 via email Attorney for Appellant: Dorrell; Attorney for Appellee: Weber. E/Res Brief Due on 12/22/14 for Appellee Daniel L. Ritz, Jr. [14-20526] (Jeffrey Lee Dorrell)

* * *

11/17/2014 RECORD EXCERPTS FILED. Record Excerpts NOT Sufficient as they require caption to be corrected.

Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO

REMEDY THE DEFAULT. # of Copies Provided: 0 Sufficient

	Record Excerpts due on 12/01/2014 for Appellant Husky International Electronics, Incorporated [14-20526]
	REVIEWED AND/OR EDITED The original text prior to review appeared as follows:
	RECORD EXCERPTS FILED by Appellant Husky International Electronics, Incorporated. *11/17/2014* Date of service: 11/17/2014 via email Attorney for Appellant: Dorrell; Attorney for Appellee: Weber [14-20526] (Jeffrey Lee Dorrell)
11/17/2014	RECORD ON APPEAL FORWARDED. [14-20526] (CAG)
11/18/2014	BRIEF MADE SUFFICIENT filed by Appellant Husky International Electronics, Incorporated in 14-20526 [7778314-2]. Sufficient Brief deadline satisfied. Paper Copies of Brief due on 11/24/2014 for Appellant Husky International Electronics, Incorporated. [14-20526] (CAG)
11/18/2014	RECORD EXCERPTS MADE SUFFICIENT filed by Appellant Husky International Electronics, Incorporated in 14-20526 [7778354-2]. Sufficient Record Excerpts deadline satisfied. Paper Copies of Record Excerpts due on 11/24/2014

for Appellant Husky International Electronics, Incorporated. [14-20526] (CAG)

* * *

12/16/2014 APPELLEE'S BRIEF FILED. Brief NOT Sufficient as it requires an Appearance Form from counsel (Weber) signing the brief. # of Copies Provided: 0. E/Res's Brief deadline satisfied. Sufficiency of Brief due on 12/30/2014 for Appellee Daniel L. Ritz Jr. Reply Brief due on 01/02/2015 for Appellant Husky International Electronics, Incorporated. Paper Copies of Brief due on 12/23/2014 for Appellee Daniel L. Ritz Jr. [14-20526] REVIEWED AND/OR EDITED The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by Appellee Mr. Daniel L. Ritz, Jr. *12/16/2014.* Date of service: 12/16/2014 via email- Attorney for Appellant: Dorrell [14-20526] (William D. Weber)

12/16/2014 RECORD EXCERPTS FILED. # of Copies Provided: 0. Paper Copies of Record Excerpts due on 12/23/2014 for Appellee Daniel L. Ritz Jr. [14-20526] (Excess pages allowed in 12/18/14 order) REVIEWED AND/OR EDITED

	The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellee Mr. Daniel L. Ritz, Jr. Date of service: 12/16/2014 via email Attorney for Appellant: Dorrell [14-20526] (William D. Weber)
	* * *
12/30/2014	APPELLANT'S REPLY BRIEF FILED
	* * *
02/24/2015	CASE CALENDARED for oral argument on Tuesday, 04/07/2015 in New Orleans in the West Courtroom - AM session. In accordance with our policy, lead counsel only will receive via email at a later date a copy of the court's docket and an acknowledgment form. All other counsel of record should monitor the court's website for the posting of the oral argument calendars. [14-20526] (SME)
04/07/2015	ORAL ARGUMENT HEARD before Judges Stewart, King, Elrod. Arguing Person Information Updated for: Jeffrey Lee Dorrell arguing for Appellant Incorporated Husky International Electronics; Arguing Person Information Updated for: William D. Weber arguing for Appellee Daniel L. Ritz, Jr. [14-20526] (SME)

05/22/2015	PUBLISHED OPINION FILED. [14-20526 Affirmed] Judge: CES , Judge: CDK , Judge: JWE Mandate pull date is 06/12/2015 [14-20526] (JMA)
05/22/2015	JUDGMENT ENTERED AND FILED. [14-20526] (JMA)
06/15/2015	MANDATE ISSUED. Mandate pull date satisfied. [14-20526] (RJd)

* * *

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:11-cv-03020

Husky International Electronics, Inc
Assigned to: Judge Melinda Harmon
Case in other court: SDTX-Adversary, 10-03156
Cause: 28:0158 Notice of Appeal re Bankruptcy Matter (BA)

Date Filed: 08/18/2011
Date Terminated: 07/14/2014
Jury Demand: None
Nature of Suit: 422 Bankruptcy Appeal (801)
Jurisdiction: Federal Question

In Re

Daniel Lee Ritz, Jr
738 Highway 6 S 230
Houston, TX 77079
Debtor
also known as
Bo Ritz

represented by
William David Weber
Weber Law Firm, P.C.
6666 Harwin Drive #220
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713-789-3300
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Email: wlf@weberlaw.com
ATTORNEY TO BE NOTICED

Appellant

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represented by
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713-522-9444
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Email:

jdorrell@hanszenlaporte.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Appellee
Daniel Lee Ritz, Jr

represented by
William David Weber
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/18/2011	1	Clerks Notice of Filing of an Appeal under Bankruptcy Rule 8004. On 8/17/11, Husky International Electronics, Inc filed a notice of appeal. The appeal has been assigned to U.S. District Judge Melinda Harmon, Civil Action 4:11cv3020. Parties notified, filed. (Attachments: # 1 Notice of Appeal) (smurdock,) (Entered: 08/18/2011)
10/19/2011	2	Bankruptcy Record on Appeal. The attached documents represent all designated items to be included as the Record on Appeal in this matter, filed. (Attachments: # 1 Adversary

Date Filed	#	Docket Text
		case 10-3156 Docket Sheet, # 2 100 Addendum to record. # 3 101 Statement of Issues. # 4 103 Appellant's Designation) The following documents relate to the Appellant's designation # 5 72 Transcript 2/2/11, #6 Continuation 1, # 7 Continuation 2) # 8 73 Transcript 2/3/11, # 9 Continuation 1, # 10 Continuation 2, # 11 Continuation 3) # 12 80 Transcript 2/11/11) # 13 89 Memorandum, # 14 93 Transcript 2/10/11, # 15 Continuation 1, # 16 Continuation 2, # 17 94 Transcript 2/11/11, # 18 Continuation 1, # 19 Continuation 2) # 20 46 Transcript 7/13/11 09-39895). Modified on 10/20/2011 The following documents relate to the Appellee's designation. (Additional attachment(s) added on 10/20/2011: # 21 1 Complaint, # 22 8 Answer, # 23 61 Joint Pretrial Statement, # 24 Continuation 1, # 25 Continuation 2, # 26 77 Brief, # 27 81 Post Trial Brief, # 28 84

Date Filed	#	Docket Text
		Brief, # 29 87 Brief, # 30 90 Judgment) Designated hearing exhibits are available for review in the Clerk's Office. Modified on 10/20/2011 (smurdock,). (Entered: 10/19/2011)
10/20/2011	3	Notice of Docketing an Appeal under Bankruptcy Rule 8007(b). On 10/20/11, the appeal was transmitted to the U.S. District Court, assigned Judge Melinda Harmon, Civil Action 4:11cv3020. All appellate filings must now be made in the United States District Court with the civil action caption and case number. Parties notified, filed. (Attachments: # 1 Notice of Appeal, # 2 8004 Notice) (smurdock,) (Entered: 10/20/2011)
		* * *
12/05/2011	9	Appellant's BRIEF by Husky International Electronics, Inc, filed. (Dorrell, Jeffrey) (Entered: 12/05/2011)
01/06/2012	10	Appellee's BRIEF by Daniel Lee Ritz, Jr, filed. (Weber, William) (Entered: 01/06/2012)

Date Filed	#	Docket Text
		* * *
03/15/2012	16	REPLY to 10 Appellee's Brief, filed by Husky International Electronics, Inc (Dorrell, Jeffrey) (Entered: 03/15/2012)
		* * *
07/14/2014	20	OPINION AND ORDER Affirming Judge Bohm's Decision. Case terminated on July 14, 2014 (Signed by Judge Melinda Harmon) Parties notified. (rvazquez) (Entered: 07/15/2014)
08/12/2014	21	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 20 Order, Terminate Case by Husky International Electronics, Inc (Filing fee $ 505, receipt number 0541 13557731), filed. (Dorrell, Jeffrey) (Entered: 08/12/2014)
08/21/2014	22	Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 21 Notice of Appeal. Fee status: Paid, filed. (Attachments: # 1 NOA) (smurdock, 4) (Additional attachment(s) added on 8/21/2014: # 2 Opinion, # 3

Date Filed	#	Docket Text
		Docket sheet) (smurdock, 4). (Entered: 08/21/2014)
08/26/2014	23	DESIGNATION of Record on Appeal by Husky International Electronics, Inc, filed. (Dorrell, Jeffrey) (Entered: 08/26/2014)
08/28/2014		Notice of Assignment of USCA No. 14-20526 re: 21 Notice of Appeal, filed. (blacy, 4) (Entered: 08/28/2014)

* * *

U.S. Bankruptcy Court
Southern District of Texas (Houston)
Adversary Proceeding#: 10-03156

Assigned to: Jeff Bohm
Lead BK Case: 09-39895
Lead BK Title: Daniel Lee Ritz, Jr.
Lead BK Chapter: 7
Demand: $182433000

Date Filed: 03/31/10

Date Terminated: 01/17/13

Nature[s] of Suit:
62 Dischargeability 523(a)(2), false pretenses, false representation, actual fraud
67 Dischargeability 523(a)(4), fraud as fiduciary, embezzlement, larceny
68 Dischargeability 523(a)(6), willful and malicious injury

Plaintiff

Husky International Electronics, Inc.

represented by **Jeffrey Lee Dorrell**
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Email: jdorrell@hanszenlaporte.com
LEAD ATTORNEY

V

Defendant

Daniel Lee Ritz, Jr 738 Highway 6 South 230 Houston, TX 77079	represented by **William David Weber** Weber Law Firm 6666 Harwin Drive, Suite 220 Houston, TX 77036 713-789-3300 Fax: 713-893-6004 Email: wlf@weberlaw.com **Jeffrey S Williams** J S Williams and Associates P.O. Box 440443 Houston, TX 77244-0443 281-531-8700 Email: jswilliams100@earthlink.net *TERMINATED*: 05/11/2010 *LEAD ATTORNEY*

Filing Date	**#**	**Docket Text**
03/31/2010	1 (11 pgs)	Adversary case 10-03156. Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)), (67 (Dischargeability

		523(a)(4), fraud as fiduciary, embezzlement, larceny)), (68 (Dischargeability 523(a)(6), willful and malicious injury)) Complaint *to Deny Dischargeability of Debt* by Husky International Electronics, Inc. against Daniel Lee Ritz Jr. Fee Amount $250 (Dorrell, Jeffery) (Entered: 03/31/2010
03/31/2010		Receipt of Complaint (10-03156) [cmp,cmp] (250.00) Filing Fee. Receipt number 10117211. Fee amount $250.00. (U.S. Treasury) (Entered: 03/31/2010)
		* * *
04/07/2010	5	Summons Issued on Daniel Lee Ritz Jr. Date Issued 4/7/2010. (hler) (Entered: 04/07/2010)
04/08/2010	6	Summons Service Executed on Husky International Electronics, Inc. 4/7/2010. (Dorrell, Jeffery) (Entered: 04/08/2010)
		* * *
05/10/2010	8	Answer to Complaint (Related document(s):1 Complaint) Filed by Daniel Lee Ritz Jr. (mmap) (Entered: 05/10/2010)
		* * *
11/26/2010	24	Pre Trial Statement (Filed By

		Daniel Lee Ritz Jr.). (Attachments: 1 Exhibit List 2 Witness List 3 Proposed Findings & Conclusions) (Weber, William) (Entered: 11/26/2010)
		* * *
01/03/2011	34	Pre Trial Statement (Filed By Husky International Electronics, Inc.). (Dorrell, Jeffery) (Entered: 01/03/2011)
		* * *
01/11/2011	40	Motion to Quash or *Modify Subpoena Concerning Defendant* Filed by Daniel Lee Ritz Jr. (Attachments: 1 Trial Subpeona 2 Proposed Order) (Weber, William) (Entered: 01/11/2011)
01/11/2011	41	Motion for Expedited Consideration (related document(s): 40 Motion to Quash). Filed by Daniel Lee Ritz Jr. (Attachments: 1 Proposed Order) (Weber, William) (Entered: 01/03/2011)
		* * *
01/17/2011	43	Motion for Expedited Consideration (related document(s): 40 Motion to Quash). Filed by Daniel Lee Ritz Jr. (Attachments: 1

		Proposed Order) (Weber, William) (Entered: 01/17/2011)
		* * *
01/18/2011	45	Motion to *Exclude Defendant's Evidence and Reopen Discovery* Filed by Husky International Electronics, Inc. (Attachments: 1 Exhibit 1 2 Exhibit 2 3 Exhibit 3 4 Exhibit 4 5 Exhibit 5 6 Exhibit 6 7 Exhibit 7 8 Exhibit 8 9 Exhibit 9 10 Exhibit 10 11 Exhibit 11 12 Exhibit 12 13 Exhibit 13 14 Exhibit 14 15 Exhibit 15 16 Exhibit 16 17 Exhibit 17 18 Exhibit 18 19 Exhibit 19 20 Exhibit 20 21 Exhibit 21 22 Exhibit 22 23 Exhibit 23 24 Exhibit 24 25 Exhibit 25 26 Exhibit 26 27 Exhibit 27 28 Exhibit 28 29 Exhibit 29) (Dorrell, Jeffery) (Entered: 01/18/2011)
01/18/2011	46	Response (Filed By Husky International Electronics, Inc.). (Related document(s): 40 Motion to Quash, 43 Motion for Expedited Consideration) (Attachments: 1 Exhibit 1 2 Exhibit 2 3 Exhibit 3 4 Exhibit 4 5 Exhibit 5 6 Exhibit 6) (Dorrell, Jeffery) (Entered: 01/18/2011)
		* * *

01/18/2011	48	Order Set Hearing Motion To Quash (Related Doc # 40), Granting Motion For Expedited Consideration (Related Doc # 43) Hearing set for 1/19/2011 9:00 a.m. Signed on 1/18/2011. (rste) (Entered: 01/19/2011)
		* * *
1/18/2011	50	Order setting expedited hearing on Defendant's M/to Quash. Hearing set for 1/19/2011 at 9:00 a.m. Signed on 1/18/2011 (rste) (Entered: 01/20/2011)
01/19/2011	49	AO 435 TRANSCRIPT ORDER FORM. This is to order a transcript of Hearing held on 1/19/2011 before Judge Jeff Bohm (Original). Court Reporter/Transcriber: Judicial Transcribers (dcla) Modified on 1/20/2011 (dcla). Forwarded to transcriber. (Entered: 01/19/2011)
01/19/2011		Courtroom Minutes. Time Hearing Held: 9:00 A.M. Appearances: J.L. Dorrell, W.D. Weber. (Related document(s): 40 Motion to Quash or Modify Subpoena Concerning Defendant Filed by Daniel Lee Ritz, Jr. Arguments heard. Evidence presented. Witnesses: William D. Weber/Heather

Chaney/Daniel Lee Ritz, Jr. For the reasons stated on the record, Motion is Granted. Within 1 week, Mr. Weber to file a proposed order, signed by Mr. Dorrell. Defendant's Exhibits 1, 2.1 thru 2.6, 3.1 thru 3.11 and 4 are admitted. 1 Complaint. Trial date is set for 2/2/2011 at 01:30 P.M. at Houston, Courtroom 600 (JB). (vatt) (Entered: 01/27/2011)

* * *

01/21/2011	53	Transcript RE: Motion to Quash held on 01 19-11 before Judge Jeff Bohm. Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 04/21/2011. (lmar) (Entered: 01/21/2011)
01/21/2011	54	BNC Certificate of Mailing. (Related document(s): 47 Order on Motion for Default Judgment) No. of Notices: 2. Service Date 01/21/2011. (Admin.) (Entered: 01/21/2011)

* * *

01/24/2011	57	Pre Trial Statement (Filed By Husky International Electronics, Inc.). (Related document(s): 26 Order on Emergency Motion (Adversary),

27 Generic Order (Adversary)) (Attachments: 1 Proposed Findings of Fact & Conclusions of Law 2 Husky's Memorandum of Law on Contested Legal Issues 3 Exhibit List #1 4 Exhibit List #2 5 Husky's Specific Objections to Ritz Trial Exhibits #1 6 Husky's Specific Objections to Ritz Trial Exhibits #2 7 Trial Witness List #1 8 Trial Witness List #2) (Dorrell, Jeffery) (Entered: 01/24/2011)

* * *

01/24/2011	59	Response (Filed By Husky International Electronics, Inc.). (Attachments: 1 Husky's Supplemental Specific Objections to Ritz Trial Exhibits Copy 2) (Dorrell, Jeffery) (Entered: 01/24/2011)
01/24/2011	60	Amended Pre Trial Statement (Filed By Daniel Lee Ritz Jr.). (Related document(s): 24 Pre Trial Statement) (Attachments: 1 Amended Exhibit List 2 Amended Witness List 3 Proposed Findings and Conclusions 4 Defendant's Objections to Plaintiff's Trial Exhibits) (Weber, William) (Entered: 01/24/2011)

01/26/2011	61	Joint Pre Trial Statement (Filed By Husky International Electronics, Inc.). (Attachments: 1 Husky's Proposed Findings of Fact and Conclusions of Law 2 Husky's Memorandum of Law on Contested Legal Issues 3 Husky's Exhibit List—Copy 1 4 Husky's Exhibit List—Copy 2 5 Husky's Specific Objections to Ritz Trial Exhibits—Copy 1 6 Husky's Specific Objections to Ritz Trial Exhibits—Copy 2 7 Husky's Trial Witness List—Copy 1 8 Husky's Trial Witness List—Copy 2 9 Husky's Supplemental Specific Objections to Ritz Trial Exhibits—Copy 1 10 Husky's Supplemental Specific Objections to Ritz Trial Exhibits—Copy 2 11 Ritz's Amended Witness List 12 Ritz's Objections to Husky's Exhibits 13 Ritz's Amended Exhibit List l4 Ritz's Proposed Findings of Fact and Conclusions of Law 15 Ritz's Memorandum of Law on Contested Issues of Law) (Dorrell, Jeffery) (Entered: 01/26/2011)

* * *

01/27/2011		Courtroom Minutes. Time Hearing Held: 9:00 A.M. Appearances: J.L. Dorrell, W.D. Weber. (Related document(s): 45 Motion to Exclude Defendant's Evidence and Reopen Discovery Filed by Husky International Electronics, Inc. Arguments heard. Witness: Daniel Lee Ritz, Jr. Hearing is continued to 2/2/2011 at 01:30 P.M. at Houston, Courtroom 600 (JB). 1 Pretrial Conference: Complaint. Trial remains set for 2/2/2011 at 01:30 P.M. at Houston, Courtroom 600 (JB). (vatt) (Entered: 01/27/2011)
		* * *
01/31/2011	65	Transcript RE: PRETRIAL CONFERENCE held on January 27, 2011 before Judge Jeff Bohm. Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 05/2/2011. (lmar) (Entered: 01/31/2011)
		* * *
02/02/2011		Courtroom Minutes. Time Hearing Held: 1:30 P.M. Appearances: J.L. Dorrell, D.J. Farris, W.D. Weber. (Related

	document(s): 1 Trial: Day 1. Plaintiff invokes the rule. Plaintiff's case. Arguments heard. Evidence presented. Witnesses: Nicolas C. Davis/Daniel L. Ritz, Jr. Trial is continued to 2/3/2011 at 08:30 A.M. at Houston, Courtroom 600 (JB). Plaintiff's Exhibits 1 thru 4, 6, 7, and 167 thru 169 are admitted. (vatt) Modified on 2/3/2011 (vatt). (Entered: 02/02/2011)
02/02/2011	Courtroom Minutes. Time Hearing Held: 1:30 P.M. Appearances: J.L. Dorrell, D.J. Farris, W.D. Weber. (Related document(s): 45 Motion to Exclude Defendant's Evidence and Reopen Discovery Filed by Husky International Electronics, Inc. Hearing is continued to 2/3/2011 at 08:30 A.M. at Houston, Courtroom 600 (JB). (vatt) (Entered: 02/02/2011)
	* * *
02/03/2011	Courtroom Minutes. Time Hearing Held: 8:30 A.M. Appearances: J.L. Dorrell, D.J. Farris, W.D. Weber. (Related document(s): 1 Trial: Day 2. Plaintiff's Oral Motion to Use

		Deposition Transcript of Daniel L. Ritz, Jr. as Direct Evidence is Denied for the reasons stated on the record. Plaintiff's case continues. Arguments heard. Evidence presented. Witnesses: Daniel L. Ritz, Jr./Nancy K. Finney/James D. Rogers/Richard Holland. Trial is continued to 2/4/2011 at 11:00 A.M. at Houston, Courtroom 600 (JB). Plaintiff's Exhibits 171, 172, 174, and 175 are admitted. (vatt) (Entered: 02/03/2011)
02/03/2011		Courtroom Minutes. Time Hearing Held: 8:30 A.M. Appearances: J.L. Dorrell, D.J. Farris, W.D. Weber. (Related document(s): 45 Motion to Exclude Defendant's Evidence and Reopen Discovery Filed by Husky International Electronics, Inc. Hearing is continued to 2/4/2011 at 11:00 A.M. at Houston, Courtroom 600 (JB). (vatt) (Entered: 02/03/2011)
02/04/2011	70	BNC Certificate of Mailing. (Related document(s): 68 Notice of Filing of Official Transcript (Form)) No. of Notices: 2. Service Date 02/04/2011.

		(Admin.) (Entered: 02/04/2011)
02/07/2011	71	AO 435 TRANSCRIPT ORDER FORM. This is to order a transcript of Hearing held on 2/2/2011 and 2/3/2011 before Judge Jeff Bohm (Original). Court Reporter/Transcriber: Judicial Transcribers (dcla) Modified on 2/7/2011 (dcla). Forwarded Judicial Transcribers. Modified on 2/7/2011 (dcla). Judicial Transcribers unable to accept as a daily order due to length. Order forwarded to Exceptional Reporting. (Entered: 02/07/2011)
		* * *
02/08/2011	72	Transcript RE: TRIAL AND MOTION TO EXCLUDE EVIDENCE AND REOPEN DISCOVERY held on 2/2/11 before Judge JEFF BOHM. Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 05/9/2011. (thud) (Entered: 02/08/2011)
02/08/2011	73	Transcript RE: TRIAL AND MOTION TO EXCLUDE EVIDENCE AND REOPEN DISCOVERY held on 2/3/11 before Judge JEFF BOHM.

		Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 05/9/2011. (thud) (Entered: 02/08/2011)
02/09/2011	75	Notice of Filing of Official Transcript as to 72 Transcript, 73 Transcript. Parties notified (Related document(s): 72 Transcript, 73 Transcript) (jdav) (Entered: 02/09/2011)
02/10/2011		Courtroom Minutes. Time Hearing Held: 10:00 A.M. Appearances: J.L. Dorrell, D.J. Farris, W.D. Weber. (Related document(s): 45 Motion to Exclude Defendant's Evidence and Reopen Discovery Filed by Husky International Electronics, Inc. For the reasons stated on the record, Motion is Denied. 1 Trial: Day 3. Plaintiff's case continues. Evidence presented. Plaintiff's case rests. Oral Motion for a Directed Verdict by Defendant. Arguments heard. Oral Motion is Granted as to 523(a)(2)(A) and Denied as to 523(a)(4) & 523(a)(6). Defendant's case. Arguments heard. Evidence presented. Witnesses: Heather Cheaney/Daniel Lee Ritz, Sr./Craig Takacs/L. Andrew

		Wells. Trial is continued to 2/11/2011 at 10:00 A.M. at Houston, Courtroom 600 (JB). Plaintiff's Exhibit 5 and Defendant's Exhibits 38, 39, 42, 43, 55a, & 69 are admitted. (vatt) (Entered: 02/10/2011)
		* * *
02/11/2011		Courtroom Minutes. Time Hearing Held: 10:00 A.M. Appearances: J.L. Dorrell, D.J. Farris, W.D. Weber. (Related document(s): 1 Trial: Day 4. Defendant's case continues. Arguments heard. Witnesses: Marlin R. Williford/Daniel L. Ritz, Jr. Defendant's case rests. Closing arguments. Matter is taken under advisement. Defendant's Exhibits 1 thru 11, 32.1 thru 32.4, 45 thru 49, 56, 57, 59.1, 59.2, 60, 61.1 thru 61.3, 62.1 thru 62.3, 63.1 thru 63.17, 64.1 thru 64.18, 65, 66, 67, & 68.1 thru 68.18 are admitted. (vatt) Modified on 2/19/2011 (vatt). (Entered: 02/19/2011)
02/14/2011	77	Brief (Filed By Husky International Electronics, Inc.). (Dorrell, Jeffery) (Entered: 02/14/2011)
02/15/2011	78	AO 435 TRANSCRIPT ORDER

		FORM. This is to order a transcript of Hearing held on 2/11/2011 before Judge Jeff Bohm (Original). Court Reporter/Transcriber: Exceptional Reporting Services (dcla) (Entered: 02/15/2011)
03/02/2011	79	Brief (Filed By Daniel Lee Ritz Jr.). (Weber, William) (Entered: 03/02/2011)
03/02/2011	80	Transcript RE: CLOSING ARGUMENT held on 2/11/11 before Judge JEFF BOHM. Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 05/31/2011. (thud) (Entered: 03/02/2011)

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03/07/2011	84	Brief (Filed By Husky International Electronics, Inc.). (Related document(s): 79 Brief, 81 Brief) (Dorrell, Jeffery) (Entered: 03/07/2011)
05/10/2011	85	Notice and Order regarding exchanging of exhibits and witness lists in all contested matters and adversary proceedings. (Entered: 05/10/2011)

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07/21/2011	87	Brief (Filed By Husky International Electronics, Inc.). (Dorrell, Jeffery) (Entered: 07/21/2011)
07/29/2011	88	AO 435 TRANSCRIPT ORDER FORM. This is to order a transcript of Trial held on 2/2/2011, 2/3/2011/, 2/10/2011 and 2/11/2011 before Judge Joff Bohm (Original). Court Reporter/Transcriber: Exceptional Reporting Services (dcla) Modified on 7/29/2011 (dcla). 2/2/2011 and 2/3/2011 previously ordered by this party. Partial of 2/11/2011 also previously ordered by this party. 2/10/2011 and remainder of 2/11/2011 electronically forwarded to Exceptional Reporting Services 7/29/2011. (Entered: 07/29/2011)
08/04/2011	89	Memorandum Opinion Regarding Plaintiff's Original Complaint. Signed on 8/4/2011 (Related document(s): 1 Complaint) (rste) (Entered: 08/04/2011)
08/04/2011	90	Judgment denying all relief requested by the Plaintiff. Signed on 8/4/2011 (rste) (Entered: 08/04/2011)

* * *

08/11/2011	93	Transcript RE: TRIAL DAY 3 held on 2/10/11 before Judge JEFF BOHM. Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 11/9/2011. (thud) (Entered: 08/11/2011)
08/11/2011	94	Transcript RE: TRIAL - DAY 4 (CLOSING ARGUMENTS OMITTED) held on 2/11/11 before Judge JEFF BOHM. Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 11/9/2011. (thud) (Entered: 08/11/2011)
08/12/2011	95	Notice of Filing of Official Transcript as to 93 Transcript, 94 Transcript. Parties notified (Related document(s): 93 Transcript, 94 Transcript) (kcraig) (Entered: 08/12/2011)
		* * *
08/17/2011	97	Notice of Appeal filed. (related document(s): 89 Opinion, 90 Judgment (Adversary)). Fee Amount $255. Appellant Designation due by 08/31/2011. (Dorrell, Jeffery) (Entered: 08/17/2011)
08/17/2011		Receipt of Notice of Appeal (10-03156) [appeal,ntcapl] (255.00)

		Filing Fee. Receipt number 11953632. Fee amount $ 255.00. (U.S. Treasury) (Entered: 08/17/2011)
08/17/2011	98	Election to Appeal to District Court. (Dorrell, Jeffery) (Entered: 08/17/2011)
08/18/2011	99	Clerk's Notice of Filing of an Appeal under Bankruptcy Rule 8004. On 8/17/11, Husky International Electronics, Inc filed a notice of appeal. The appeal has been assigned to U.S. District Judge Melinda Harmon, Civil Action 4:11cv3020. Parties notified (Related document(s): 97 Notice of Appeal) (smur) (Entered: 08/18/2011)
		* * *
08/31/2011	101	Addendum to Record on Appeal (related document(s): 97 Notice of Appeal, 98 Election to Appeal). (Dorrell, Jeffery) (Entered: 08/31/2011)
08/31/2011	102	Statement of Issues on Appeal (related document(s): 97 Notice of Appeal, 98 Election to Appeal). (Dorrell, Jeffery) (Entered: 08/31/2011)
09/01/2011	103	Appellant Designation of Contents For Inclusion in Record on Appeal (related

		document(s): 97 Notice of Appeal, 98 Election to Appeal, 101 Addendum to Record on Appeal). (Dorrell, Jeffrey) (Entered: 09/01/2011)
		* * *
10/20/2011	106	Notice of Docketing an Appeal under Bankruptcy Rule 8007(b). On 10/20/11, the appeal was transmitted to the U.S. District Court, assigned Judge Melinda Harmon, Civil Action 4:11cv3020. All appellate filings must now be made in the United States District Court with the civil action caption and case number. Parties notified (Related document(s): 97 Notice of Appeal) (smur) (Entered: 10/20/2011)
		* * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-20526

D.C. Docket No. 4:11-CV-3020

In the Matter of: DANIEL LEE RITZ, JR., also known as Bo Ritz,

Debtor

HUSKY INTERNATIONAL ELECTRONICS, INCORPORATED,

Appellant

v.

DANIEL LEE RITZ, JR.,

Appellee

Appeal from the United States District Court for the Southern District of Texas, Houston

Before STEWART, Chief Judge, and KING and ELROD, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that appellant pay to appellee the costs on appeal to be taxed by the Clerk of this Court.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: DANIEL LEE RITZ, JR. Debtor.	§ § § § §	Case No. 09-39895-H4-7 Chapter 7
HUSKY INTERNATIONAL ELECTRONICS, INC. Plaintiff, v. DANIEL LEE RITZ, JR. Defendant.	§ § § § § § § § §	Adversary No. 10-03156

JUDGMENT RELATING TO COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

[Adv. Docket No. 1]

On March 31, 2010, Husky International Electronics, Inc. (the Plaintiff) filed its Complaint to Determine Dischargeability of Debt. Daniel Lee Ritz, Jr. (the Defendant), who is the Debtor in the Main Case, filed an answer on May 10, 2010. This Court conducted a trial on January 27, February 2, February 3, February 10, and February 11, 2010. Simultaneously with the entry of this judgment on the docket, this Court's Memorandum Opinion regarding this dispute is also being docketed. For the

reasons set forth in the Memorandum Opinion, this Court finds that the relief requested by the Plaintiff should be denied. It is therefore:

ORDERED that all relief requested by the Plaintiff is DENIED.

Signed on this 4th day of August, 2011.

/s/ Jeff Bohm

Jeff Bohm

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	)	Case No. 10-3156-H4-ADV
Plaintiff,	)	Houston, Texas
v.	)	
DANIEL LEE RITZ, JR.	)	Wednesday, February 2, 2011
Defendant.	)	(1:40 p.m. to 3:01 p.m.)
	)	(3:24 p.m. to 5:13 p.m.)

TRIAL AND MOTION TO EXCLUDE EVIDENCE AND REOPEN DISCOVERY

BEFORE THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE

* * *

NICHOLAS DAVIS, PLAINTIFF'S WITNESS, SWORN

[Page 17]

* * *

[Page 27]

BY MR. DORRELL:

Q And that would be the Defendant, this gentleman sitting here at the table to my left?

A Absolutely.

Q All right. Did he come to see you?

A No, sir, he called me on my cell phone number.

Q Have you ever actually met him?

A No, sir.

Q All right. And what did he say?

A The conversation was fairly brief. He called and asked me if there was any way that we could work with them to work out a payment plan on these bounced checks. He acknowledged that they had bounced. He understood that there was a concern and asked us if we could work with him. I told him that it was going to put my company into a severe financial distress.

I didn't have the wherewithal to work with him. He needed to, as he had done in the past on bounced checks, wire money immediately or we would have to pursue litigation. And he said, well, if we're talking about litigation, then I can't talk to you any more. And I said that's not true. All you need to do is wire the money and we won't be talking about litigation. And he said, well, we're talking about litigation. And he hung up.

Q And so when was this conversation, if you remember?

A On or about January 12th. I don't know the specific date, but it was a couple of days after we ceased making shipments to them.

Q Did you ever have any further conversations with Defendant, Mr. Ritz?

A No, sir.

Q Anyone else with Husky?

A No, sir.

Q Have any conversations that you know of?

A No, sir.

Q Anybody else from Chrysalis ever have any conversations with you?

A No, sir.

Q Was there ever any more contact between Husky and Chrysalis that you know of?

A Not that I am aware of.

Q All right, what happened next?

* * *

[Page 41]

Q Did Mr. Ritz ever disclose to Husky that Chysalis was transferring cash to other entities owned or controlled by Mr. Ritz?

A No, sir.

* * *

[Page 45]

Q And isn't it true that before Mr. Ritz called you in January of '07, you didn't even know who Mr. Ritz was, right?

A I had only heard the name and I did not know specifically who he was.

Q So you and him have never talked if you didn't know who he was?

A I already said that we had never spoken before that.

Q And Mr. Ritz never made any misrepresentations to you, did he?

A How could he if we hadn't of spoken?

* * *

[Page 68]

DANIEL RITZ, PLAINTIFF'S WITNESS, SWORN

* * *

[Page 84]

BY MR. DORRELL:

Q Did you personally contribute capital to Chrysalis Manufacturing many times?

A No.

Q Now, that testimony is also different from what you gave in your March 27th, 2008, deposition, isn't it, sir?

A Yes.

* * *

[Page 100]

Q Okay. Did you borrow any money from private individuals, sir, to put it into Chrysalis?

A Not personally, no, sir.

Q That's a little bit different than your testimony of March of 2008 too, isn't it, sir?

A Yes, sir.

Q What you actually said in March of 2008 was that you borrowed money from private individuals. Aren't those your exact words?

A Yes, sir.

Q And that's no longer your testimony today?

A Correct.

Q Were any of the infusions that were made documented with a note, by loan, a promissory note? There were like hundreds, weren't there?

A Yes, sir.

Q And out of those hundreds, how many of them were documented with a note?

A I could not find any evidence of any notes.

Q So that would be 'none', is that right?

A Yes.

* * *

Q Yes, sir. My question was: You say that the transfers of $1.2 million dollars to other entities that you owned or controlled was repaying previous loans, do you not? Is that not your position?

A No, that's not a hundred percent my position, no, sir.

Q Well, how many percent of it is your position?

A I think there are, of the $1.2 million you mentioned—

Q Yes, sir.

A —it looks like the evidence to me shows that there's probably about 200 to $250,000 of repayment of loans.

Q Okay. And none of those are documented with any notes or anything else?

A Correct.

Q That also is different from your testimony of March of 2008, isn't it, sir?

A You'd have to point that out to me.

Q I beg your pardon?

A I don't recall exactly what I said in 2008. I know—I believe, if you will, that we would find intercompany payables earmarked in the notes on the receivables line and payables line and things like that.

Q Why don't you just look at page 61 of your deposition?

A Okay.

MR. WEBER: Fifty-one?

MR. DORRELL: Sixty-one, line five.

BY MR. DORRELL:

Q Just tell me when you're there.

(Pause)

A Sixty-one, line five?

Q Yes, sir. Are you there?

A Yes.

'QUESTION: So the cash infusions that you made in some cases was money you were acquiring from other sources?'

Q Answer?

'ANSWER: Yes, sir.

Question: And when you infuse it into Chrysalis, was this documented in the form of a note or loan agreement or any such thing?'

Q Answer?

'ANSWER: Yes, sir, typically. I believe that's the case.

QUESTION: So we would find, if we looked in the right drawer, a series of loan

agreements or notes between you and Chrysalis?'

Q Your answer?

'ANSWER: Yes.'

* * *

[Page 106]

Q So, Mr. Ritz, I mean you testified pretty clearly that you were receiving preferred stock in Chrysalis in exchange for these infusions that you now say Chrysalis was obligated to repay, isn't that right?

A I—You know, first of all I think that this is—

Q No, no, Mr. Ritz, the question is: Isn't that right?

A I don't—I don't know, sir, no.

Q You don't know what?

A Not exactly—I don't think that's exactly right, no.

Q It's not exactly right that you testified you were getting preferred stock through the same transfers of money you now say are repayments of loans?

A No, I think it's exactly right that I thought that at the time and I wasn't real clear.

Q So your testimony is that you've thought that you had preferred stock and today you've discovered that you don't?

A No, I think that the timeline focused on everything from 2003 forward is what you were asking about here, and now you're being very specific

and pointing to the board relative to those transfers, and I don't—I don't think that's my belief, no.

Q Okay. I'm not sure I know what that means—

A Okay.

Q —but my question was: Are you saying that you did not get preferred stock now?

A Yes.

Q So all of this was just some kind of a hallucination where you talk about one million dollars worth of preferred stock?

A I don't think it was a hallucination. I frankly didn't know how it was accounted for.

Q Well, it's not a slip of the tongue, sir, is it?

A I'm not sure what you mean.

Q It's a completely different version of the facts, Mr. Ritz. That's what I mean.

A Right. I think I said earlier I believe that I have a much more full understanding of the facts now than I did then.

* * *

[Page 113]

Q Okay. Look at page 67 of the deposition. Tell me when you're there.

(Pause)

A Okay, I'm there.

Q Okay. The record reflects a recess from 11:55 to 1:27. That's about an hour and a half, right?

A Yes, sir.

'QUESTION: Back on the record after a lunch break. Mr. Ritz, you're still under oath. Did you have a chance to meet with your attorney during the lunch break?

ANSWER: Yes.

QUESTION: And without telling me anything you discussed with him, are you happy with the testimony you've given so far today?

ANSWER: Yes.

QUESTION: You don't wish to change anything?

ANSWER: No.'

Q Okay. That was your testimony then?

A Right.

Q So you obviously had an opportunity to speak with your lawyer to get any clarifications that you needed. I gave you many opportunities to change your testimony during this deposition, did I not? I did several of those.

A I believe you did, yes.

Q And yet you never changed it?

A Right.

Q And you had the opportunity, after you got the written transcript, to make written changes then too, didn't you, sir?

A I believe so, yes.

Q And you didn't do that?

A No, sir.

Q And yet in this lawsuit, you have come to court and you have made dramatic changes in the sworn testimony that you gave, isn't that true, sir?

A I think there are some changes, yes, sir.

* * *

[Page 131]

Q Well, Mr. Ritz, I'm going to ask it this way: You were the person who was running the show when it came to moving money around on Chrysalis as well as all of the rest of your corporations, these six that are listed on the demonstrative exhibit in front of you. And I've got to stand up to read them because I'm not sure I can remember them anymore. I'm specifically talking about Institutional Capital Management, Inc., Institutional Insurance Management, Inc., Virtra Merger Corporation, also known as ComCon Manufacturing, Dynalyst Manufacturing Corporation, CapNet Advisors, Inc., CapNet Risk Management, Inc., and CapNet Securities Corporation. You were the guy running the show on these when it came to moving the money, were you not?

A There was—I mean my—specifically I was not the person that typically made the transfers, but I would say I was typically responsible as a person of authority in those accounts.

Q Okay. So if money got moved, you knew about it and probably, in most cases, instructed it, correct?

A Yes.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	)	Case No. 10-3156-H4-ADV
Plaintiff,	)	Houston, Texas
v	)	
DANIEL LEE RITZ, JR.	)	Thursday, February 3, 2011
Defendant.	)	(8:44 a.m. to 12:51 p.m.)
	)	(3:03 p.m. to 6:11 p.m.)

TRIAL AND MOTION TO EXCLUDE EVIDENCE AND REOPEN DISCOVERY

BEFORE THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 10]

DANIEL LEE RITZ, JR., PLAINTIFF'S WITNESS, SWORN

* * *

[Page 26]

BY MR. DORRELL:

Q So you did not mean to say then that—bear with me one second.

(Pause)

You did not mean to say then that Marlin Williford was personally responsible for the electronic

funds transfers from the Chrysalis Account Numbers 3575101 and 3246930, both held at Amegy Bank?

A That's been—that's my memory of it.

Q Which is your memory?

A That he did have some control over those transfers. That's my memory of it. I mean I—

Q Some control after you told him what to do?

A Well, I didn't give him specific instruction, I gave him general authority to act, and I think he did a good job in his discretion. I mean it's hard to remember every bit of that period, but I mean it was a big responsibility trying to meet the payrolls of all the companies.

Q Did you initiate some of the transfers of cash from Chrysalis to your various entities, sir?

A I'm certain that I did, yes.

Q Was that a positive?

A I'm certain that I did initiate some of the transfers, yes.

Q And did you authorize some of the transfers that you may not have initiated?

A Yes.

Q Did you initiate and authorize many of the transfers?

A Yes.

* * *

[Page 30]

BY MR. DORRELL:

Q The interrogatory asks for you to identify every person who caused any transfer of money to be made in any amount between November of 2006 and May of 2007 from Chrysalis to various entities.

A Okay.
Q Your answer as to Number 1 is what?
A Okay.
Q And as your lawyer requested, read the entire answer.
A Yes, sir.

"Marlin Williford"—

Q If you'd use your copy and I'll get that.
A Sorry.

> "Marlin Williford acted as CFO for both ComCon Manufacturing Services and Chysalis Manufacturing during the period 11 of 2006 to 2007 He was personally responsible for electronic funds transferred from Chrysalis Account 3575101 and 3246930, both held at Amegy Bank. These payments to ComCon Manufacturing were used to cover payroll for Chrysalis Manufacturing employees. Marlin was the primary person who managed these accounts. Defendant did not initiate nor authorize any of these transfers."

Q Yes, sir, Defendant was you, right?
A Yes.

* * *

[Page 32]

BY MR. DORRELL:

Q Now, Mr. Ritz, you're not going to say that it was Marlin Williford who made all of the transfers from Chrysalis to ComCon, are you?
A I'm not—frankly, I'm not sure who made all the transfers at this time and during this period of time.

Q Well, a moment ago I understood you to say that you were very sure that you initiated and authorized a large number of these transfers from Chrysalis to your various entities, did I hear that correctly?

A To the various entities, yes, sir.

Q And this particular one, ComCon, is the one that got the largest number of transfers, isn't it?

A Yes.

Q All right—

THE COURT: Hold on one second.

(Court confers with clerk)

You may proceed.

MR. DORRELL: Okay?

THE COURT: Thank you.

BY MR. DORRELL:

Q So your testimony today is completely different from what you said under oath in answer to Interrogatory Number 8, is it not, sir?

A Your going from various entities to specifically ComCon and, you know, my memory is that I was not making every decision about it and I didn't really recall a lot of this particular period, because from the time that ComCon was involved I think Mr. Williford made most of the decisions about these transfers.

MR. DORRELL: Objection, nonresponsive.

THE COURT: Sustained.

BY MR. DORRELL:

Q Mr. Ritz, today you have told us, and I thought very clearly, you were responsible for initiating and authorizing most of the transfers, at least most, if not

all, most of the transfers of cash from Chrysalis to your various entities, correct?

A Yes.

* * *

[Page 59]

Q Well, the issue in this trial is whether or not the transfers from Chrysalis to IIM and Chrysalis to ICM were fraudulent as to the rights of my client, Husky. Your contention, as I understand it, is that—

MR. WEBER: I object. That's a mischaracterization of the pleadings and the allegations. There's no fraudulent conveyance – no fraudulent conveyance pleadings involved in this case. It's not pled; it's just mischaracterization.

THE COURT: Mr. Dorrell, response?

MR. DORRELL: The entire case is a fraudulent transfer case. We list off—

THE COURT: I think Mr. Weber is saying you haven't pleaded Section 548, which would be a fraudulent conveyance action. I'm assuming that's what you are arguing, Mr. Weber.

MR. WEBER: Correct, your Honor. It's an (a)(2), (a)(4) and (a)(6) dischargeability, fraud, actual fraud, breach of fiduciary duty; (a)(4) and, frankly, (a)(6) I'm not sure of. But no fraudulent conveyance. He's arguing, basically, I guess verbally but not on the pleadings that the fact that this amounts to actual fraud, although clearly case law says there has to be a false representation involved. I just think it's—it is not even pled. That's my objection, your Honor.

THE COURT: Let me carry the objection. Would you ask the question again, please?

* * *

[Page 65]

Q Okay. So, nevertheless, you personally guaranteed up to a million dollars of credit for Virtra Merger.

A Yes.

Q And what does that mean exactly when you personally guarantee something alone?

A That means if the corporation cannot pay it, then I would owe it personally.

Q So it would be a good idea then to do anything you could to make sure the corporation pays that debt, correct?

A Yes.

Q And we've already I think established that you caused approximately $677,000 to be transferred from Chrysalis to Virtra Merger in that five-month period from November of—or six-month period from November of 2006 to May of 2007, correct?

A I think that I said I was aware of it. I don't think I said I caused it.

Q Well, the testimony will be as it was taken down.

In any event, would you agree with me that it would have been a personal benefit to you to have made sure in that way by transferring Chrysalis funds to VirTra that VirTra would be able to pay its loan?

A Under the supposition, yes, sir.

Q Okay. What does "under the supposition" mean?

A I don't think that happened. You're giving me a theoretical case. And, yes, if that case had occurred, that I don't believe did, it would have benefited me.

Q You don't think what occurred?

A I don't think there was an occurrence of that line of credit being paid from any of the funds that you've described here.

Q Well, do you know how much of it was drawn?

A I do not have any of those records, no.

Q All right. It certainly would have been beneficial to you for CapNet Securities to get its money back from Chrysalis; would it not?

A Yes, sir.

Q And it would have certainly been a benefit to you for this company called Clean Fuels or Gulf Coast Fuels to get its money back from Chrysalis, correct?

A Yes. I mean, generally, that's true. I was not as personally involved with that one as I was in the case of CapNet Securities; I was 85 percent shareholder.

Q I understand. But you're agreeing with me it would have been a personal benefit to you.

A Yes.

Q And we can certainly agree then that for Dynalyst Manufacturing to get $96,000 back from Chrysalis would also have been a personal benefit to you.

A Yes, sir.

Q Okay It would have personally benefited you for all of the entities that you owned an interest in to get $1.2 million, collectively, from Chrysalis; would it not?

A If it had net received $1.2 million, it would have benefited me, yes, sir.

Q Whatever the number is.

A Yes.

Q You agree that it was a benefit to you.

A If monies net of all the transfers load to these companies, collectively, it would have been a benefit to me. Yes, sir.

Q Now, I don't remember if we covered this before, but there were no repayment terms on any of these things that you characterize as loans from your various companies to Chrysalis, correct?

A For the most part I do not believe so, no.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	)	Case No. 10-3156-H4-ADV
Plaintiff,	)	Houston, Texas
v.	)	
DANIEL LEE RITZ, JR.	)	Friday, February 11, 2011
	)	(10:55 a.m. to 1:28 p.m.)
Defendant.	)	(3:10 p.m. to 4:15 p.m.)
	)	(5:29 p.m. to 5:50 p.m.)

TRIAL – DAY 4
(CLOSING ARGUMENTS UNDER SEPARATE COVER)

BEFORE THE HONORABLE JEFF BOHM,
UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 44]

DANIEL RITZ, PLAINTIFF'S WITNESS, SWORN

* * *

[Page 120]

BY MR. WEBER:

Q Let's take a look at the International Insurance Management sheet.

That's 26.1, and if you would, describe the bottom line of that analysis there please.

A Okay. It—for the record, it's Institutional Insurance Management.

Q I'm sorry.

A It's all right. It's—this particular shows that Chrysalis transferred to IIM, we'll call it, in the period from January of '06 to May of '07 approximately $358,000. It received from IIM 57—excuse me—$757,000, with a net difference being owed by Chrysalis back to IIM of $399,000.

Q And why were those payments made? A IIM—

Q 26.

A Yeah. You know, IIM was a place where I had discretion to be able to pay money to Chrysalis when it needed it. I was intent on meeting the payrolls for this company and—

Q Why did you have discretion? I mean—

A I owned 100 percent of the stock. I was the board basically and, you know, except for certain passthrough items, I conducted the business in it. So, it's not that I technically was that company, but I had discretion in order to act as officer, director to do these transfers. And I routinely did them on behalf of Chrysalis.

Q And continue with your reasons for making the transfers.

A So, we, you know, we typically had payroll overdrafts and other needs of the company, and it was, you know, when that was brought to me as something that needed to be handled so to speak, you know, I would find discretion where I could and make transfers to the company.

Q Would the answers to these questions be the same for 26.2 except for the fact that the time period of the analysis is a different time period?

A Yes, sir.

Q Let's move on to 27.1. Recap sheet for Institutional Capital Management. What is the bottom line result on that analysis?

A During the period, it shows that Chrysalis transferred approximately $11,290 more to Institutional Capital Management than it did receive.

Q Okay. And would the answers for 27.2—that's a similar analysis for the time period of April '06 through May of '07? A Yes, sir.

Q And what's the bottom line result, looking at it from that perspective?

A During that period, ICM actually paid more to make up the difference, and left Chrysalis owing ICM approximately a little over a thousand dollars.

Q Let's look at 28.1. CapNet Advisors/Chrysalis transfer recap. What's the bottom line result on that?

Well, before I do that—I'm sorry.

A Yeah.

Q I forgot to ask you, with respect to 27, what were the reasons for that transfer? Was it similar to what you just indicated with respect to Capital—IIM?

A Yes, sir. I—well, I mentioned earlier that IIM and ICM were companies where which I had a—some advisory capacity. I didn't typically get paid from Chrysalis or derive any fees, but in both those cases

those are pure transfers as it relates to no other detail of any interaction between the company other than in the short term borrowings.

In the case of 28.2—

Q Well, let me stop you.

A Okay.

Q With respect to Exhibit 26 IIM and 27 ICM, do you recall Ms. Finney's testimony as to how the transfers were booked for accounting purposes?

A Accounts payable/receivable between the companies.

Q And so, were they—booking it that way, would that be considered a capital infusion, or would that be considered a loan, or would there be some other proper characterization?

A No, all these were considered short term unsecured loans, I mean, between the companies. And they would have been booked either as APAR or alternatively due to or from as an intercompany transfer.

Q Was there a proper business purpose for all of these transfers back and forth? Was there a proper business purpose for all of these transfers back and forth?

A Yes, I think there was.

Q And describe the purpose.

A The purpose was is that, you know, we—each of these entities had invested in the company, they were intent on keeping Chrysalis active and, you know, they ultimately would have had a stake in its success.

And they, you know, it was my opinion as officer of the entities that made the investments that they were good investments and valid, and were, you know, would hope to see it through to fruition and return a capital.

* * *

[Page 132]

BY MR. WEBER:

Q Mr. Ritz, if you would, take a look at Exhibit 59.1, please. And describe—well look at 59.1 and 59.2 together please, and describe both of those documents.

A Yes, sir. I—in evidencing from the bank records that we had income at Chrysalis up and through the point of the sale of the plant, I went back and pulled every income ledger item that I could account for on all of the bank statements for Chrysalis during the periods from January of '06 through '07—May of '07, and I put them down from where which they came from in terms of the account.

And I made a summary of that in total, and listed it here.

Q So, is that a summary of what kind of entry?

A Of the income—

Q What was the source—

A —the revenue—excuse me, the revenue.

Q What was the source of the income? Was it from business operations, transfers into the account by other entities?

A Yeah, this—

Q Describe the source of the income.

A Okay. I need to be more thorough. I—we were trying to account not from anything related to any transfers other than revenue generated as a direct result of shipments made by the company and paid from customers.

In this case, the customers accounts as receivables were typically sold, so the evidence is that these are from the factoring company that typically owned the receivable, and they paid us as we generated them, pretty much on a daily basis as generated.

* * *

[Page 136]

CROSS EXAMINATION

BY MR. DORRELL:

Q Mr. Ritz, you left out the part about how you got preferred stock with exchange for transfers of cash to Chrysalis, didn't you?

A They weren't pertinent to this particular time period.

Q You left out the part about how there is no evidence of anything relating to the character of these transfers of money, didn't you, sir?

A I've testified as have others that we transferred them as intercompany short-term loans, and the intent was that they were daylight loans to accommodate payroll.

Q Yes, sir, and I think my point is the only evidence we have of that is your word, isn't it, sir?

A No, I think others testified to that as well.

Q You left out the part about how there was no documentation of the transfers to Dynalyst as notes or loans.

A I think that both Mr. Williford, Ms. Finney, and frankly, Mr. Takacs, although I—I apologize. I think he was not able to answer. But I think both of the other two suggested that they were intercompany transfers and documented in the records of the companies.

MR. DORRELL: Objection. Nonresponsive.

THE COURT: Sustained.

BY MR. DORRELL:

Q Mr. Ritz, my question was, you left out the part about how there is no documentation, there were no notes. Of all of these hundreds of transfers, there was not one single note that evidences an indebtedness, is there, sir?

A It's on—it's on the specific financial statements of each of the companies.

MR. DORRELL: Objection. Nonresponsive.

THE COURT: Sustained.

BY MR. DORRELL:

Q Mr. Ritz, do you mind answering the question that I asked?

A They were documented only in the financial records of the balance sheet.

Q So, your answer is, there are no notes, no loan documents, nothing that shows any repayment terms or in any other way evidences any obligation by Chrysalis to repay money to Dynalyst. Yes or no.

A No.

Q To VirTra Merger.

A I think there is evidence of notes with VirTra Merger.

Q Well, I thought you testified that you looked for it and couldn't find it.

A I think—that doesn't mean that it didn't exist. There was a note, and there's evidence of it.

Q Well, if there was, it doesn't exist today, to the best of your knowledge. It's certainly not in the courtroom.

A I think it does exist. I don't have it.

Q It's not in the courtroom and it's not in evidence.

A I don't have it, no, sir.

Q There is no evidence of a note or any repayment terms or any loan agreement between Chrysalis and ComCon.

A I think it's the same—

Q Which is the same company as VirTra.

A Yes, sir, it is.

Q There is no evidence of any note or loan or repayment terms between Chrysalis and CapNet Advisors, is there, sir?

A I think we—I've testified that those were for services. There should not have been any loan documents for that company.

Q So, the answer would be there are no loan documents or—

A That's correct.

Q —any obligation to repay; is that right?

A No note between the two companies.

Q And there is no loan or any—and no repayment terms or anything else to evidence any obligation by Chrysalis to repay any money that it might have received from CapNet Securities Corporation either, is it sir?

A No note specifically, no.

* * *

[Page 153]

REDIRECT EXAMINATION

BY MR. WEBER:

Q Take again a look at Exhibit 26.1, Mr. Ritz.

A Yes, sir.

Q And I forget the mistake. How much was the mistake?

A Well, it was approximately—

Q Nineteen thousand, did I hear?

A —nineteen thousand. Yes, sir.

Q Okay. Does it—take a look at the red part on the third page.

A Yes, sir.

Q There's really—that number shows—what does it show?

A It shows that IIM had paid into Chrysalis $399,000 more than it had received.

So, if we take that correction into account, we would have a $380,000 number approximately that—

Q So, in other words, it would still show that Chrysalis received from IIM $380,000 more than with the other way?

A Yes, sir.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	Case No. 10-3156-h4-ADV
Plaintiff,	Houston, Texas
v.	
DANIEL LEE RITZ, JR.	Thursday, February 3, 2011
Defendant.	(8:44 a.m. to 12:51 p.m.)
	(3:03 p.m. to 6:11 p.m.)

TRIAL AND MOTION TO EXCLUDE EVIDENCE AND REOPEN DISCOVERY

BEFORE THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 114]

NANCY KNOX FINNEY, PLAINTIFF'S WITNESS, SWORN

* * *

[Page 128]

BY MR. DORRELL:

Q Is it your testimony that movements of cash among Mr. Ritz's entities, which is Chrysalis and the other entities we have just identified, was directed by anyone other than Mr. Ritz?

MR. WEBER: Objection.

THE WITNESS: No—

MR. WEBER: Leading.

THE COURT: Hold on a minute.

MR. WEBER: It's leading.

THE COURT: No; I'll overrule that.

THE WITNESS: No one else made—I didn't take direction from anybody else to move funds other than Mr. Ritz.

* * *

[Page 132]

BY MR. DORRELL:

Q Was it your impression, Ms. Finney, that the transfers from—strike that.

Were you involved in transfers of any money from the entities you see there on the exhibit to Chrysalis?

A Yes.

Q Was it your impression that these were loans or did you have an impression?

A We recorded them as a receivable payable, so it's kind of an unofficial loan.

Q Okay. And what documentation of the terms of the loans existed?

A They were not documented.

Q Why was that?

A They just weren't. It was, I guess, intended to be repaid and it was just there were no loan documents. They weren't official loans. There was no interest-bearing instrument.

Q Did Mr. Ritz ever tell you that he didn't want any documentation?

A I don't remember that.

Q Okay. Is it possible that somebody was supposed to be responsible for documenting these loans and then just failed to do it?

A No.

Q No?

A No.

Q Why is that not possible?

A Because it probably would have been me, and I was never told to do it.

* * *

[Page 140]

Q Do you have an opinion as to Mr. Ritz's character for truthfulness?

A I can testify for my dealings with him.

Q Yes, ma'am.

A I never just—there were other issues where I was told one thing and it just flat out didn't happen.

Q So your opinion of Mr. Ritz's character for truthfulness would be what?

A Poor.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	Case No. 10-3156-h4-ADV
Plaintiff,	Houston, Texas
v.	
DANIEL LEE RITZ, JR.	Thursday, February 3, 2011
Defendant.	(8:44 a.m. to 12:51 p.m.)
	(3:03 p.m. to 6:11 p.m.)

TRIAL AND MOTION TO EXCLUDE EVIDENCE AND REOPEN DISCOVERY

BEFORE THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 156]

* * *

JAMES DAVID ROGERS, PLAINTIFF'S WITNESS, SWORN

* * *

BY MR. DORRELL:

Q Mr. Rogers, what was your connection with Mr. Daniel Lee Ritz, Jr.?

A I worked for the CapNet organization between January of '04 and January of '07 except for a brief

spell in '05. And I worked for ICM for a year-and-a-half before that.

Q What was your title?

A When I left I was the vice president of corporate finance.

Q For which entity?

Q CapNet Securities.

A Did you have a business card?

A Yes.

Q What did that say that your title was?

A Vice President of Corporate Finance.

Q Were you the vice president of corporate finance for any other entities that were under control by Mr. Ritz?

A No.

Q As vice president of corporate finance what were your duties or areas of responsibility?

A Well, it was to examine the deal flow, look at opportunities, see what looked good, what didn't; also to—for those who wanted a deal I would prepare the offering documents if we were going to raise capital.

Q Okay. Did you have access to financial records of all of Mr. Ritz's companies?

A Of all the portfolio companies, yes.

Q And what does that mean?

A The companies that had been invested in like Dynalyst and Altatron and Virtra Merger. I did not see or have need to see CapNet Securities or those other companies.

Q Yes, sir. Thank you. Tell me, sir, was there any doubt in your mind about who was running the show financially speaking at the Ritz companies that you were involved with?

A Any doubt in my mind?

Q Yes, sir.

A No, sir.

Q Who was it?

A Ritz.

Q And that's the Mr. Ritz who's the Defendant in this case sitting at the table to my left?

A Yes, sir.

Q Okay. Not his father.

A No.

* * *

[Page 165]

BY MR. WEBER:

Q: Were you aware of any direct dealing between Mr. Ritz and Husky International or any of Husky International's employees or representatives?

A No.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	)	Case No. 10-3156-h4-ADV
Plaintiff,	)	Houston, Texas
v.	)	
DANIEL LEE RITZ, JR.	)	Thursday, February 3, 2011
Defendant.	)	(8:44 a.m. to 12:51 p.m.)
	)	(3:03 p.m. to 6:11 p.m.)

TRIAL AND MOTION TO EXCLUDE EVIDENCE AND REOPEN DISCOVERY

BEFORE THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 168]

* * *

RICHARD HOLLAN, PLAINTIFF'S WITNESS, SWORN

* * *

[Page 172]

BY MR. DORRELL:

Q So as you sit here today, you would consider that Mr. Ritz still owes you $700,000?

A I am a creditor in Mr. Ritz's overall bankruptcy.

Q All right. And I mean, how do you feel about Mr. Ritz because of this?

A I mean—

MR. WEBER: Your Honor, I object. That's immaterial how he feels about Mr. Ritz.

THE COURT: I'll sustain the objection. I think you need a little—put more meat on the bone, if you will. If you want—I mean, you asked the question correctly with respect to when Ms. Finney was on the stand. But that is such a scattershot the way you phrased it I'll sustain.

BY MR. DORRELL:

Q You don't have a very high opinion of Mr. Ritz today, do you?

A Well, no, I do not.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	)	Case No. 10-3156-H4-ADV
	)	
	)	Houston, Texas
Plaintiff,	)	
v.	)	Friday, February 10, 2011
DANIEL LEE RITZ, JR.	)	(10:09 a.m. to 11:16 p.m.)
	)	(1:17 p.m. to 2:37 p.m.)
Defendant.	)	(2:56 p.m. to 3:37 p.m.)

TRIAL – DAY 3

BEFORE THE HONORABLE JEFF BOHM,
UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 25]

MR. DORRELL: Our contention about fraud is that the fraud was not the common-law fraud that requires an affirmative misrepresentation that was relied upon to the detriment and damages. Our contention is that the actual fraud that causes the discharge is the actual fraudulent transfers of money which Mr. Ritz caused to happen from Chrysalis to his other entities.

* * *

[Page 28]

MR. DORRELL: I have two points to make, yes.

THE COURT: Yeah, go ahead.

MR. DORRELL: I will concede that we are making a somewhat nontraditional use of *The Texas*

Uniform Fraudulent Transfer Act because typically this is done TUFTA or Section 548 with a trustee or some creditor seeking to avoid the transfers and recapture the money.

THE COURT: Right.

MR. DORRELL: We have a little bit different situation here because what we're saying is that this can constitute the fraud under Texas Business Organizations Code, Section 21. 223 that makes this Debtor individually liable for the corporate contractual debt of the company he caused the transfer.

THE COURT: And you may have a compelling argument on that issue under 523(a)(4), fraud while acting in a fiduciary capacity but 523(a)(2)(A) is a very, very precise statute and it—and the case law on it says that Element Number 1 is the Debtor made a representation and so I understand what you're saying. I understand your argument but I don't feel comfortable jurisprudentially of taking your argument, the 548 argument and bootstrapping it into 523(a)(2)(A).

MR. DORRELL: Then let me say two more things.

THE COURT: Please.

MR. DORRELL: I understand the Court's—I mean, we did—this is not a new discovery for us today.

THE COURT: Yeah.

MR. DORRELL: We did some struggling with this ourselves and there are many strategic reasons why we chose to approach it this way—

THE COURT: I understand.

MR. DORRELL: —which probably the Court can easily understand. The first point I would make is I don't think that Judge Lynn is actually foreclosing the possibility of fraudulent transfer being an actual fraud. I think he is speaking in the context of the more traditional use which relies on the common-law elements of fraud, that being he's just saying the elements that we all know are the common-law causes of action for fraud, a representation relied upon to the detriment with damages. I don't think that forecloses any other form of fraud. We know that the law recognizes not only fraud by affirmative representation but also fraud by nondisclosure. There is evidence in this case—

THE COURT: Stop. And it's that fraud in Section 523(a)(4) that I think covers it and so the fraudulent acts, the badges of fraud that you have been addressing and for which I believe there is evidence I think you can fit into 523(a)(4). You also have to prove, as you know, fiduciary duty but the 523(a)(2)(A), as I read the case law, you have to show—you have to prove that the Defendant made a representation. You don't have to prove Defendant made a representation under 523(a)(4), at least from my reading of the case law but under 523(a)(2)(A), you do and that's why, as I've said jurisprudentially, I don't feel comfortable with your argument as to 523(a)(2)(A). Over on 523(a)(4), I'm more comfortable with it.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	)	Case No. 10-3156-H4-ADV
	)	
	)	Houston, Texas
Plaintiff,	)	
v.	)	Thursday, February 11, 2011
DANIEL LEE RITZ, JR.	)	(10:55 a.m. to 1:28 p.m.)
	)	(3:10 p.m. to 4:15 p.m.)
Defendant.	)	(5:29 p.m. to 5:50 p.m.)
	)	

TRIAL – DAY 4

(CLOSING ARGUMENTS UNDER SEPARATE COVER)

BEFORE THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 11]

MARLIN WILLIFORD, DEFENDANT'S WITNESS, SWORN

* * *

[Page 42]

BY MR. DORRELL:

Q And as a result, sir, what is your opinion of Mr. Ritz's character for truthfulness?

A Well, these statements I've said are not true.

Q And do you know of other statements Mr. Ritz has said that are not true?

A Well, I'd rather speak to just what's on the record if I may.

Q What I need you to speak to, Mr. Williford, is your opinion of Mr. Ritz's character for truthfulness. You've told us you have one. Can you tell us what it is?

A Well, like I said, in reading these things I was disappointed that I did not believe them to be truthful. You know, in that respect I would say that that was not true.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUSKY INTERNATIONAL ELECTRONICS, INC.	)	Case No. 10-3156-H4-ADV
Plaintiff,	)	Houston, Texas
v.	)	
DANIEL LEE RITZ, JR.	)	Friday, February 11, 2011 (5:50 p.m. to 6:52 p.m.)
Defendant.	)	

CLOSING ARGUMENT

BEFORE THE HONORABLE JEFF BOHM,
UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 38]

THE COURT: All right; let's make it clear. I am absolutely concluding that those transfers out of Chrysalis were not repayment of loans, based upon the Fifth Circuit case I've cited.

MR. WEBER: I understand, your Honor.

THE COURT: Okay. You've preserved any point for appeal, Mr. Weber; there is no question about that. But I can assure you, you won't change my mind on that one.

* * *

[Page 40]

MR. DORRELL:

I believe, respectfully, that Mr. Weber is conflating the law and the approach of an action for avoidance of a fraudulent transfer and the action we have here, which is to hold a shareholder personally liable for corporate contractual debt. I think the pro rata analysis is correct if this was a TUFTA, or a Section 548 action to avoid a fraudulent transfer. I think it is not correct when the issue is: Did Mr. Ritz cause Chrysalis to be used to perpetrate an actual fraud on Husky for his direct, personal benefit? When those showings are made, as I think they were here, then Mr. Ritz becomes personally liable for the entire amount of the corporate contractual debt and there is not a pro rata analysis. I have not briefed that; that is my belief of the state of the law on it.

* * *

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	)	
	)	Case No. 09-39895-H4-7
DANIEL LEE RITZ, JR.,	)	Houston, Texas
Debtor.	)	Wednesday, July 13, 2011
	)	(9:39 a.m. to 9:56 a.m.)

AMENDED TRANSCRIPT

STATUS CONFERENCE

BEFORE THE HONORABLE JEFF BOHM,
UNITED STATES BANKRUPTCY JUDGE

* * *

[Page 7]

THE COURT:

* * *

I have some comments. As Mr. Dorrell and Mr. Weber know, we had a trial in my court, down on the fourth floor because there were some renovations going on in this court, and I'm sure everyone is wondering how come I haven't issued a ruling. I will tell you I've been on the bench for six and a half years. I try to get my rulings done quickly, sometimes from the bench, sometimes in writing. I felt that it was important to reduce my thoughts to

writing on this one, particularly when I'm dealing with 523 actions and 727 actions I try to reduce my thoughts to writing because when you start either denying a discharge, you know, under 727 or deny a specific discharge or a specific debt under 523 it's serious and I feel that I should reduce—if I can I reduce my thoughts to writing so that if anyone wants to appeal me an Appellate Court has got, you know, something in writing they can look at.

And I have spent an enormous amount of time, very candidly, given the testimony I heard, trying to come to a landing as to how to deny the discharge of the debt owed to Huskie, because, as my written order or my written memorandum will set forth, I don't believe Mr. Ritz. I found him to be a witness with virtually no credibility. I think he drained Chrysalis of a lot of money. But unfortunately, based upon the law I have, the statute that the Texas Legislature passed, I have concluded that the debt is dischargeable. In other words, based upon the law that I am dealing with and based upon the testimony I have, I've got no representations that Mr. Ritz made to Huskie, I have concluded that the Complaint must fail.

I don't think I've ever said this on the record, but I'm going to say it now. I hope you do appeal me. I hope an Appellate Court tells me I'm wrong, because I don't believe Mr. Ritz. I think he was trying to drain that company. I have to say that the Texas Legislature passed the statute that it did. I've got the testimony that I do and the evidence that I've got. I think that what he did was wrong insofar as I don't think people ought to be draining corporations of money. But the Texas Legislature has clearly in

recent years passed legislation that shields officers and directors more than it has in the past. And there may be good reasons for so doing it and I'm not going to get into that.

And in effect, and I'm working on it right now, the best I can tell what should have happened under Texas State law, if I draw the inference correctly, is that Huskie should have in effect sought a or prosecuted a derivative action on behalf of Chrysalis against Mr. Ritz and assuming it prevailed in effect would have had to have Chrysalis be in a bankruptcy and ask the Trustee of Chrysalis to pursue a derivative action, one of those scenarios. In effect I'm saying based upon the Texas legislation that was recently passed, I think it was '09 or '07, that you've got to do a derivative action on behalf of all creditors. That's the inference I ended up drawing.

In any event I will tell you I'm very unhappy with the result, but I'm trying to adhere to my oath. My oath is to look at the evidence and Mr. Ritz made no representation to Huskie before Huskie shipped the goods and I couldn't find anything, and, believe me, I've been looking long and hard, there were lots of exhibits, I can't find anything to show any kind of representation.

So I'm trying to put the finishing touches on the opinion and there was another wrench is when the Supreme Court came out with this recent *Marshall* case I had to stop and say okay, do *I* have constitutional authority to sign a final judgment. And I've been doing that on everything that I'm working on now. It took me a while. I've read the opinion several times. I have concluded that I do

have constitutional authority to sign a final judgment in this case. But that's yet another issue. If I don't, then I ought to be making recommendations to a District Judge.

So, Mr. Dorrell, if your client decides to appeal, that may be another issue you can raise. I think I do have constitutional authority to sign a final judgment, but if you think I'm wrong you can raise it with the District Court. Because if I'm wrong, then it means the District Court can review everything de novo.

So I wanted to alert you all to that. And Mr. Dorrell and Mr. Weber, I thought you tried the case well and you cited the law correctly on behalf of each of your clients and I and several other people have looked at this. So I'm sure that Mr. Ritz will be pleased and I'm sure that Huskie's owners will not be pleased. You can tell them that I said on the record, Mr. Dorrell, that I thought you did a first-rate job. I mean it's not—this is one of those cases where it's not your fault that the facts aren't the way that

* * *

[Page 11]

So bear with me, I'll get it out. Like I said, I hope you do appeal me, maybe an Appellate Court can find some way, because what I think—I think what Mr. Ritz did should not be allowed. But that said, if I think that way I need to quit this job and go run for the Legislature and pass legislation. Right now I'm going to enforce the legislation as it has been passed and I think I'm required to do.

* * *

EXHIBIT 26.1

IIM - Chrysalis - Transfer Recap Sheet
(1/1/06 - 5/21/07)

IIM to Chrysalis

Chrysalis to IIM

Date	Method	Chrysalis to MM	IIM to Chrysalis	Net
1/4/2006			55,000	(55,000)
1/6/2006			90,000	(145,000)
1/11/2006			25,000	(170,000)
1/12/2006			50,000	(220,000)
1/17/2006			50,000	(270,000)
1/23/2006		27,000		(243,000)
1/25/2006		15,000		(228,000)
1/25/2006		10,000		(218,000)
1/27/2006			5,000	(223,000)
1/31/2006		10,000		(213,000)
2/2/2006		35,000		(178,000)
2/6/2006			50,000	(228,000)
2/7/2006			27,000	(255,000)
2/8/2006			5,000	(260,000)
2/9/2006		10,000		(250,000)
2/13/2006			3,000	(253,000)
2/16/2006		30,000		(223,000)
2/22/2006			80,200	(303,200)
2/22/2006		50,000		(253,200)
3/6/2006			100,000	(353,200)
3/7/2006			30,000	(383,200)
3/9/2006			2,000	(385,200)
3/10/2006			6,800	(392,000)
3/24/2006		12,500		(379,500)

4/4/2006			30,000	(409,500)
4/11/2006			9,950	(419,450)
4/13/2006			25,000	(444,450)
4/28/2006		9,000		(435,450)
7/12/2006			4,000	(439,450)
7/12/2006			6,000	(445,450)
7/13/2006			20,750	(466,200)
7/13/2006			10,750	(476,950)
7/17/2006			8,000	(484,950)
7/17/2006			1,800	(486,750)
8/11/2006			5,200	(491,950)
8/16/2006		1,300		(490,650)
8/16/2006		5,450		(485,200)
8/16/2006		1,400		(483,800)
8/16/2006		1,000		(482,800)
10/16/2006		650		(482,150)
11/10/2006		2,200		(479,950)
11/28/2006			6,000	(485,950)
12/7/2006			5,000	(490,950)
12/7/2006		5,000		(485,950)
12/13/2006			25,300	(511,250)
12/14/2006			1,300	(512,550)
12/15/2006			2,060	(514,610)
12/18/2006			400	(515,010)
12/18/2006		400		(514,610)
12/20/2006		3,000		(511,610)
12/20/2006		2,000		(509,610)
12/21/2006		5,200		(504,410)
12/22/2006		4,000		(500,410)
12/27/2006		2,500		(497,910)
1/8/2007			500	(498,410)
1/9/2007			2,950	(501,360)
1/12/2007		8,050		(493,310)
1/16/2007			4,400	(497,710)
1/17/2007		2,400		(495,310)
1/17/2007		1,000		(494,310)
1/17/2007		155		(494,155)

1/19/2007		4,600		(489,555)
1/19/2007		1,000		(488,555)
1/22/2007		2,800		(485,755)
1/30/2007		2,500		(483,255)
1/30/2007		1,000		(482,255)
1/31/2007		3,020		(479,235)
2/2/2007		1,000		(478,235)
2/5/2007		895		(477,340)
2/5/2007		305		(477,035)
2/9/2007			4,675	(481,710)
2/9/2007		11,925		(469,785)
2/14/2007		2,750		(467,035)
2/14/2007		1,000		(466,035)
2/15/2007		140		(465,895)
2/20/2007		5,000		(460,895)
2/23/2007		3,050		(457,845)
2/23/2007		2,500		(455,345)
3/6/2007		18,000		(437,345)
3/7/2007		12,325		(425,020)
3/9/2007		6,675		(418,345)
3/19/2007		1,500		(416,845)
3/23/2007		1,650		(415,195)
3/29/2007		8,030		(407,165)
4/2/2007		4,650		(402,515)
4/3/2007		2,150		(400,365)
4/4/2007		1,000		(399,365)
4/10/2007			1,500	(400,865)
4/17/2001			1,220	(402,085)
4/17/2007		1,800		(400,285)
5/21/2007		1,000		(399,285)
5/24/2007			2,100	(401,385)
5/24/2007		2,100		(399,285)
Totals		**358,570**	**757,855**	**(399,285)**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DANIEL LEE RITZ, JR., a/k/a BO RITZ **Debtor**	§ § § §	**CASE NO. 09-39895** **CHAPTER 7**
HUSKY INTERNATIONAL ELECTRONICS, INC., **Plaintiff** **vs.** **DANIEL LEE RITZ, JR.,** **Defendant**	§ § § § § § § § §	**ADVERSARY PROCEEDING NO. _____**

PLAINTIFF'S ORIGINAL COMPLAINT TO DENY DISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. §523

Husky International Electronics, Inc., creditor herein (hereinafter "Plaintiff" or "Husky"), files this Complaint to Deny Dischargeability of Debt Pursuant to 11 U.S.C. §523. In support hereof, plaintiff states as follows:

I. JURISDICTION

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §157, §1334 and 11 U.S.C. §523. This is a core proceeding under 28 U.S.C. §157(b)(l) and §157(b)(2)(B), (I) and (O). This adversary proceeding is brought in connection

with Defendant's case under Chapter 7 of Title 11 U.S.C., Case No. 09-39895.

II. VENUE

2. Venue is proper under 28 U.S.C. §1409(a).

III. PARTIES

3. Plaintiff Husky International Electronics, Inc., is a Colorado corporation.

4. Defendant Daniel Lee Ritz, Jr., Debtor and Defendant herein ("Debtor" or "Defendant"), is an individual residing in Harris County, Texas, who may be served with the summons and complaint in accordance with Bankruptcy Rule 7004(b)(9) by mailing it to Defendant by U.S. First Class Mail, postage prepaid to the mailing address shown in his petition, 20615 Denford Court, Katy, Texas, 77450. Jeffrey S. Williams is the Debtor's attorney and may be served with a copy of the summons and complaint in accordance with Bankruptcy Rule 7004(b)(9) by U.S. First Class Mail, postage prepaid, at 11200 Westheimer, Suite 900, Houston, Texas 77042.

IV. NATURE OF THE CASE

5. This is an adversary proceeding on plaintiff's fraud claims against the debtor. This suit seeks to reduce the debt to a judgment against debtor and requests a determination that the judgment is a debt that should not be discharged by the Bankruptcy Court pursuant to 11 U.S.C. §523(a)(2), (a)(4) and (a)(6).

V. FACTUAL BACKGROUND

6. Husky is a Colorado seller and distributor of electronic device components. Ritz was a director and owner of the now-defunct Chrysalis

Manufacturing Corporation ("Chrysalis"), a manufacturer of electronic circuit boards and other devices. Chrysalis purchased components from Husky to make the electronic circuit boards and other devices that Chrysalis then sold.

7. Husky and Chrysalis entered into a "Master Credit and Sales Agreement" (the "Master Agreement"). The Master Agreement provided that Husky would deliver merchandise to Chrysalis pursuant to the exchange of purchase orders and confirmations. Pursuant to the Master Agreement, Chrysalis placed numerous orders for components which Husky filled and delivered.

8. However, instead of using the proceeds from the sale of circuit boards and other devices to pay Husky for the components, Ritz caused Chrysalis to dissipate the funds to Ritz's family members and to other companies Ritz owned. Ritz then caused the insolvent Chrysalis to file bankruptcy, as a result of which Chrysalis failed to pay Husky for **$182,433.04** in components.

9. Specifically, between November 2006 and May 2007, Ritz transferred more than **$1,200,000.00** of Chrysalis' cash in *at least* the following individual amounts to the following seven entities and to Ritz's father:

(i) **$677,622.00** to ComCon Manufacturing Services, Inc., a/k/a VirTra Merger Corporation;

(ii) **$121,821.00** to CapNet Securities Corporation;

(iii) **$52,600.00** to CapNet Risk Management, Inc.;

(iv) **$172,100.00** to Institutional Capital Management, Inc., and Institutional Insurance Management, Inc.;

(v) **$99,386.90** to Dynalyst Manufacturing Corporation;

(vi) **$26,500.00** to Clean Fuel International Corp., a/k/a Gulf Coast Fuels, Inc.;

(vii) **$11,240.00** to CapNet Advisors Incorporated; and

(viii) **$60,000.00** to Daniel Lee Ritz, Sr., (Ritz's father).

Ritz was the registered agent for five[1] of the seven entities that reaped the benefits of the monies Ritz transferred, and the registered agent for the remaining two, Leon Andrew Wells, shared Ritz's office address at 2500 City West Blvd., Suite 700, Houston, Texas 77042. Ritz testified on March 27, 2008, that he owned at least the following percentages of the named companies:

(i) CapNet Securities Corporation—**85%**;[2]

(ii) Institutional Capital Management, Inc.—**40%**[3];

(iii) Institutional Insurance Management, Inc.—**100%**;[4]

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[1] Ritz is registered agent for (i) ComCon Manufacturing Services, Inc, a/k/a VirTra Merger Corporation; (ii) CapNet Risk Management, Inc.; (iii) Institutional Capital Management, Inc.; (iv) Institutional Insurance Management, Inc.; and (v) Clean Fuel International Corp.

[2] Ritz deposition of March 27, 2008, 132:23-24.

[3] Ritz deposition of March 27, 2008, 148:1-6.

(iv) Dynalyst Manufacturing Corporation—**25%**;[5] and

(v) Clean Fuel International Corp., a/k/a Gulf Coast Fuels, Inc. —**20%**.[6]

10. Ritz could not remember if he was a stockholder in the remaining companies to which he wired money (because "I've invested in a number of different companies as a stockholder [and] I don't think I could name them all"[7]). However, Ritz did remember that he is also chairman and director of Dynalyst Manufacturing Corporation;[8] president, secretary, treasurer, and director of Institutional Insurance Management, Inc.;[9] director and CEO of Capnet Securities Corporation;[10] a director of Capnet Advisors, incorporated;[11] and a director of CapNet Risk Management, Inc.[12]

11. As a result of Ritz having wired Chrysalis' money to his family members and closely-held companies as detailed above, Chrysalis issued a check dated **November 1, 2006**, with Chrysalis as drawee and Husky as payee in the amount of

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[4] Ritz deposition of March 27,2008, 34:25-35:1.

[5] Ritz deposition of March 27, 2008, 135:1-2.

[6] Ritz deposition of March 27, 2008, 34:23-24.

[7] Ritz deposition of March 27, 2008, 16:14-19.

[8] Ritz deposition of March 27, 2008, 14:17.

[9] Ritz deposition of March 27, 2008, Exhibit 3, p.1.

[10] Ritz deposition of March 27, 2008, 29:19-21 and Exhibit 3, p.1.

[11] Ritz deposition of March 27, 2008, Exhibit 3, p.2.

[12] Ritz deposition of March 27, 2008, Exhibit 3, p.2.

$10,505.25. This check was returned "NSF" when presented by Husky for payment. On **November 14, 2006**, Chrysalis issued a check to Chrysalis as drawee and Husky as payee in the amount of **$14,025.00**. This check was returned NSF when presented by Husky for payment. On **December 19, 2006**, Chrysalis issued a check in the amount of **$23,559.48**. This check was returned "NSF" when presented by Husky for payment. On **December 22, 2006**, Chrysalis issued a check in the amount of **$40,000.00**. Like the others, this check was returned "NSF" when presented by Husky for payment.

VI. CAUSES OF ACTION

A. First Cause of Action-Ritz's Statutory Liability for Chrysalis' Breach of Contract

12. Plaintiff incorporates by reference paragraphs 6-11 above, as if fully set forth below.

13. Ritz used Chrysalis to perpetrate an actual fraud on Husky primarily for his direct personal benefit. Therefore, Ritz is personally liable for Chrysalis' breach of contract. TEX. BUS. ORG. CODE §21.223(b) (formerly TEX. BUS. CORP ACT §2.21); ***Willis v. Donnelly***, 199 S.W.2d 262, 272 (Tex. 2006); *see also* ***PHC-Minden, L.P. v. Kimberly-Clark Corp.***, 235 S.W.3d 163, 173 (Tex. 2007). Thus, an obligee such as Husky may hold a corporate shareholder individually liable for the corporation's contractual obligations. *Id.*

14. Ritz's failure to pay caused damages to Husky for which it here sues. Husky is entitled to reasonable attorney's fees incurred to assert its claims in this suit pursuant to TEX. CIV. PRAC. &

REM. CODE §38.001, *et seq.*, for which Husky also here sues. Husky is also entitled to late charges, interest, statutory penalties, and other damages recoverable at law or in equity, for which Husky also here sues.

B. Second Cause of Action-Common-Law Fraud

15. Plaintiff incorporates by reference paragraphs 6-11 above, as if fully set forth below.

16. By the various actions specified taken on the dates shown above, Ritz used Chrysalis to perpetrate a fraud on Husky, creating the impression that Husky would be paid for its goods while instead dissipating and transferring the money that could have paid for the goods to Ritz's closely-held companies and family members. Ritz's representations to Husky were material because they induced Husky to enter into—and continue—a business relationship which brought Husky to the brink of financial ruin. Ritz did not have the present intention that Chrysalis perform when Ritz used Chrysalis to induce Husky to sell goods. Ritz knew the representations were false or made said false representations recklessly, as a positive assertion, and without knowledge of their truth. Ritz intended for Husky to rely on the false representations. Husky justifiably relied on the false representations when it provided the goods to Chrysalis.

17. Ritz's frauds directly and proximately caused injury to Husky, for which Husky here sues. Because Husky's injury resulted from Ritz's actual fraud or malice, Husky is entitled to exemplary damages

under TEX. CIV PRAC. & REM. CODE § 41.003(a), for which Husky here also sues.

C. Third Cause of Action-Equitable Recovery in Quantum Meruit

18. Plaintiff incorporates by reference paragraphs 6-11 above, as if fully set forth below.

19. Husky provided Ritz (through Chrysalis) with valuable goods totaling **$182,433.04**. Plaintiff provided the goods for Chrysalis' benefit. Chrysalis accepted and used the goods. Ritz knew or should have known that Husky expected compensation because Ritz had reasonable notice that Husky expected compensation when Chrysalis accepted the goods. Chrysalis' acceptance of the goods without payment caused damages for which Husky here sues.

D. Fourth Cause of Action-Breach of Fiduciary Duty

20. Plaintiff incorporates by reference paragraphs 6-11 above, as if fully set forth below.

21. Chrysalis was insolvent, as evidenced by the numerous checks it sent to Plaintiff that were returned "NSF" and that Chrysalis shortly thereafter filed for bankruptcy. When a corporation is insolvent, a fiduciary relationship arises between officers and directors of the corporation and its creditors, and creditors may challenge a breach of the duty. ***Dyer v. Shafer, Gilliland, Davis, McCollum & Ashley, Inc.***, 779 S.W.2d 474, 477 (Tex. App.—El Paso 1989, writ denied); ***Martin v. Kagan (In re Tufts Elecs., Inc.)***, 746 F.2d 915, 917 (1st Cir. 1984). Officers and directors of an insolvent corporation have a fiduciary duty to deal fairly with the corporation's creditors, and that duty includes

preserving the value of the corporate assets to pay corporate debts without preferring one creditor over another or preferring themselves to the injury of other creditors. *See* ***Tigrett v. Pointer***, 580 S.W.2d 375, 383-85 (Tex. Civ. App.—Dallas 1978, writ ref'd n.r.e.).

22. As an officer and director of the insolvent Chrysalis, Ritz owed Husky a fiduciary duty to preserve Chrysalis' assets to pay its creditors fairly. In such a fiduciary relationship, Ritz was bound to act in good faith and with due regard to Husky's interests. ***Judwin Props., Inc. v. Griggs & Harrison***, 911 S.W.2d 498, 506 (Tex. App.-Houston [1st Dist.] 1995, no writ). In addition, fiduciaries owe their beneficiaries (i) a duty of candor; (ii) a duty to refrain from self-dealing; (iii) a duty to act with integrity of the strictest kind; (iv) a duty of fair, honest dealing; and (v) a duty of full disclosure.

23. Ritz, by his various defalcations, self-dealing, dishonesty, and preferring other creditors over Husky, breached his fiduciary duties to Husky. Ritz's breaches of fiduciary duty resulted in both injury to Husky and personal benefit to Ritz. As a result, Husky is entitled to, and here sues for, (i) out-of-pocket losses and expenses, (ii) lost profits, (iii) exemplary damages in an amount not less than $400,000.00, (iv) an accounting, and (v) appointment of a receiver.

VII. EXCEPTION TO DISCHARGE FOR DEBTS FOR FRAUD AND BREACH OF FIDUCIARY DUTY

24. A debt for money or property obtained by fraud is an exception to discharge under 11 U.S.C.

§523(a)(2). A debt for fraud or defalcation while acting in a fiduciary capacity is an exception to discharge under 11 U.S.C. §523(a)(4). An award of exemplary damages for Ritz's willfully and maliciously injury through her fraud will be a debt for willful or malicious injury and an exception to discharge under 11 U.S.C. §523(a)(6).

VIII. JURY DEMAND

25. Plaintiff requests a jury trial of his claims.

IX. PRAYER

26. For these reasons, Plaintiff prays that summons be issued for Defendant to appear and answer, and that Husky be awarded judgment against Defendant for the following:

(i) Actual damages;

(ii) Avoidance of all fraudulent transfers to the extent necessary to satisfy Plaintiffs claims;

(iii) Exemplary damages;

(iv) Prejudgment and postjudgment interest at the maximum lawful rate;

(v) Attorney's fees;

(vi) Court costs; and

(vii)All other relief to which Plaintiff shall show itself to be justly entitled;

together with a determination that the judgment entered may not be discharged by Defendant's bankruptcy pursuant to 11 U.S.C. §523(a).

Respectfully submitted,

ESCAMILLA, PONECK & CRUZ, LLP

By: /s/ Jeffrey L. Dorrell

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ATTORNEYS FOR PLAINTIFF

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

IN RE:	§	
	§	CASE NO. 09-39895
DANIEL LEE RITZ, JR.	§	
	§	CHAPTER 7
DEBTOR(S).	§	
	§	
	§	
HUSKY INTERNATIONAL ELECTRONICS, INC.,	§	
	§	
	§	
PLAINTIFF(S),	§	
	§	ADVERSARY NO. 10-03156
V.	§	
	§	
DANIEL LEE RITZ, JR.,	§	
	§	
DEFENDANT(S).	§	

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Defendant, Daniel Lee Ritz, Jr. ("Ritz"), responds to the third party complaint filed by Plaintiff, Husky International Electronics, Inc. ("Husky") as follows:

RESPONSES TO ALLEGATIONS BY PARAGRAPH

1. Ritz admits the allegations contained in this paragraph.

2. Ritz admits the allegations contained in this paragraph.

3. Ritz has insufficient knowledge to admit or deny the allegations contained in this paragraph.

4. Ritz responds as follows to the allegations in this paragraph:

a. **1st Sentence Only**. Ritz admits the allegations contained in this sentence.

b. **2nd Sentence Only**. Ritz denies the allegations contained in this sentence. Mr. Williams is Mr. Ritz' attorney in connection with the main case (09-39895), but was not retained, and is not acting as counsel in connection with this adversary proceeding. Ritz and Mr. Williams view as this adversary proceeding as a separate and distinct legal proceeding from the main case.

5. Ritz admits the allegations contained in this paragraph; i.e. that this lawsuit is based in part upon Husky's allegation that Ritz committed fraud. Ritz denies that he actually com- mitted any fraud.

6. Ritz responds as follows to the allegations in this paragraph:

a. **1st Sentence Only**. Ritz admits the allegations contained in this sentence.

b. **2nd Sentence Only**. Ritz admits that he was a director and owner of approximately 30% of Chrysalis common stock, and that Chrysalis was a manufacturer of electronic circuit boards and other devices. Ritz denies that he was the sole or majority owner of Chrysalis common stock.

c. **3RD Sentence Only**. Ritz admits that Chrysalis purchased parts from Husky, and that the material would have been purchased for the purpose of manufacturing devices made by Chrysalis. Ritz has insufficient knowledge to admit or deny whether the parts were

"components" or whether the parts were in fact used to manufacture electronic circuit boards or other devices made by Chrysalis.

7. Ritz responds as follows to the allegations in this paragraph:

a. 1st Sentence Only. Ritz admits the allegations contained in this paragraph.

b. 2nd Sentence Only. Ritz has insufficient knowledge to admit or deny whether the Master Agreement contains the provisions alleged. The copy of the Mater Agreement in Ritz' possession is illegible and virtually unreadable.

c. 3rd Sentence Only. Ritz admits that Chrysalis made periodic purchases of parts from Husky. Ritz has insufficient knowledge to admit or deny whether the purchases were made pursuant to the Master Agreement, or whether the Master Agreement was still in effect.

8. Ritz admits that Chrysalis filed for bankruptcy on 6/12/08. Ritz denies the remaining allegations contained in this paragraph.

9. Ritz responds as follows to the allegations in this paragraph:

a. 1st Sentence Only (including (i) - (viii)). Ritz has insufficient knowledge to admit or deny the allegations of this paragraph. Therefore, these allegations are denied.

b. 2nd Sentence Only.

i. Ritz admits that:

(1) he was the registered agent for:

(a) ComCon Manufacturing Services, Inc, a/k/a VirTra Merger Corporation;

(b) CapNet Risk Management, Inc.;

(c) Institutional Capital Management, Inc.;

(d) Institutional Insurance Management, Inc.; and

(e) Clean Fuel International Corp.

(2) Leon Andrew Wells was the registered agent for Dynalyst Manufacturing Corporation and CapNet Advisors Incorporated, and that Mr. Wells also had an office at 2500 City West Blvd., Suite 700, Houston, Texas 77042.

ii. Ritz denies that he transferred any monies or that any entities that may have received payments from Chrysalis "reaped the benefits."

c. **3rd Sentence Only**. Ritz denies the allegations contained in this sentence and would further respond as follows:

i. **CapNet Securities Corporation** - Ritz testified that he believed that he owned 85 percent, not that he owned "at least" 85 percent.

ii. **Institutional Capital Management, Inc.** - Ritz testified that he owned "About 40 percent", not "at least" 40 percent.

iii. **Institutional Insurance Management, Inc.** Ritz testified that "I own 100 percent of that", not "at least" 100 percent.

iv. **Dynalyst Manufacturing Corporation** Ritz testified that he owned "Approximately 25 percent", not "at least" 25 percent.

v. **Clean Fuel International Corp.** Ritz testified that he owned "Approximately 20 percent", not "at least" 20 percent.

10. Ritz responds as follows to the allegations in this paragraph:

a. 1st Sentence Only. Ritz denies the allegations of this sentence. This allegation is vague and ambiguous, and mischaracteriszes the testimony.

b. 2nd Sentence Only. Ritz admits the allegations of this sentence as they pertain to Dynalyst Manufacturing Corporation. Ritz has insufficient knowledge to admit or deny the allegations of this sentence.

11. Ritz responds as follows to the allegations in this paragraph:.

a. 1st Sentence Only. Ritz admits that Chrysalis issued a check dated November 1, 2006, with Chrysalis as drawee and Husky as payee in the amount of $10,505.25. Ritz denies the remaining portions of this sentence.

b. 2nd Sentence Only. Ritz admits the allegations contained in this sentence.

c. 3rd Sentence Only. Ritz has insufficient knowledge to admit or deny (and therefore denies) the allegations of this sentence with respect to the date that the check was issued. Ritz admits the remaining allegations contained in this sentence.

d. 4th Sentence Only. Ritz admits the allegations contained in this sentence.

e. 5th Sentence Only. Ritz has insufficient knowledge to admit or deny (and there- fore denies) the allegations of this sentence with respect to the date that the check was issued. Ritz admits the allegations contained in this sentence.

f. 6th Sentence Only. Ritz admits the allegations contained in this sentence.

g. 7th Sentence Only. Ritz has insufficient knowledge to admit or deny (and there- fore denies) the allegations of this sentence with respect to the date that the check was issued. Ritz admits the allegations contained in this sentence.

h. 8th Sentence Only. Ritz admits the allegations contained in this sentence.

12. Ritz incorporates the responses the paragraphs 6 through 11 above, as if fully set forth below.

13. Ritz denies the allegations contained in this paragraph.

14. Ritz denies the allegations contained in this paragraph.

15. Ritz incorporates the responses the paragraphs 6 through 15 above, as if fully set forth below.

16. Ritz denies the allegations contained in this paragraph.

17. Ritz denies the allegations contained in this paragraph.

18. Ritz incorporates the responses the paragraphs 6 through 17 above, as if fully set forth below.

19. Ritz responds as follows to the allegations in this paragraph:

a. 1st Sentence Only. Ritz denies the allegations contained in this sentence.

b. 2nd sentence Only. Ritz admits that Husky regularly and periodically sold parts to Chrysalis. Ritz denies that Husky provided "the goods" for Chrysalis' benefit. The phrase "the goods" is vague and ambiguous because Husky does not define or itemize the goods to which it refers.

c. 3rd Sentence Only. Ritz denies the allegations contained in this sentence.

d. 4th Sentence Only. Ritz denies the allegations contained in this sentence.

20. Ritz incorporates the responses the paragraphs 6 through 19 above, as if fully set forth below.

21. Ritz denies the allegations contained in this paragraph.

22. Ritz denies the allegations contained in this paragraph.

23. Ritz denies the allegations contained in this paragraph.

24. Ritz responds as follows to the allegations in this paragraph:

a. 1st and 2nd Sentences Only. Ritz admits the allegations contained in this sentence.

b. 3rd Sentence Only. Ritz denies the allegations contained in this sentence.

25. Ritz denies that Husky is entitled to a jury trial, and requests the Court to strike Husky's request for a jury trial.

26. Ritz denies that Husky is entitled to any of the relief specified in this paragraph.

DEFENSES

27. There is a defect in the parties. Ritz is not liable in the capacity in which he has been sued. All actions taken by Ritz with respect all of the transactions and occurrences involved in this lawsuit were taken only as an authorized agent for Chrysalis

Chrysalis did not undertake any actions as a principal party.

PRAYER

28. Ritz respectfully requests the Court to enter judgment that:

a. Husky take nothing;

b. Ritz be discharged with his costs; and

c. Ritz be awarded such other and further relief which is just and fair.

Respectfully Submitted,

By: /s/ Daniel Lee Ritz, Jr.

Daniel Lee Ritz, Jr.
738 Highway 6 South, Suite 230
Houston TX 77079

ATTORNEY IN CHARGE FOR:

713-269-4969 **Cell**
281-493-3849 X7794 Office

832-596-7764 **Direct Line**
281-293-8095 **Fax**
bor@capnetcapitalpartners.com - **E-Mail**

PRO SE

CERTIFICATE OF SERVICE

I certify that on the following date, a true and correct copy of the forgoing document was forwarded to the persons and by the method described below.

Date of Service: May 20, 2010

Method of Service: See below

Person Served:

Husky International Electronics, Inc.
c/o Jeffery Lee Dorrell
jdorrell@escamillaponeck.com (ECF)
squerales@escamillaponeck. com (ECF)

Jeffrey S Williams
jswilliams100@earthlink.net (ECF)

/s/ Daniel Lee Ritz, Jr.
Daniel Lee Ritz

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DANIEL LEE RITZ, JR., a/k/a BO RITZ **Debtor,**	§ § § §	**CASE NO. 09-39895** **CHAPTER 7**
HUSKY INTERNATIONAL ELECTRONICS, INC., **Plaintiff** **vs.** **DANIEL LEE RITZ, JR.,** **Defendant**	§ § § § § § § § §	**ADVERSARY PROCEEDING NO. 10-03156**

JOINT PRETRIAL STATEMENT

I. STATEMENT OF THE ADVERSARY PROCEEDING

Plaintiff's Statement:

Plaintiff Husky International Electronics, Inc., contends that defendant Daniel Lee Ritz, Jr., a natural person, is individually liable for the contractual obligations of Chrysalis Manufacturing Corporation—a company of which Ritz was an officer, director, and stockholder. Chrysalis filed for bankruptcy protection on June 12, 2008, owing Husky **$163,999.38** for various electronic components purchased. The basis of Ritz's alleged personal liability is his allegedly fraudulent transfers of approximately $1.2 million of Chrysalis' cash to other

entities Ritz owned or controlled during a 6-month period during which Chrysalis was not paying Husky for the product Husky sold and delivered to Chrysalis.

Defendant's Statement:

Plaintiff asserts that Defendant is guilty of fraud and breach of fiduciary duty, that Plaintiff has suffered damages as a result of Defendant's conduct, and that Plaintiffs has actual suffered damages. Plaintiff asserts that the damages suffered by Plaintiff are non-dischargeable pursuant to 11 U.S.C. §523(a)(2), (a)(4) and (a)(6).

II. JURISDICTION

There are no jurisdictional questions. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

III. PENDING MOTIONS

1. Plaintiff's motion to exclude evidence and to reopen discovery.

IV. CONTENTIONS OF THE PARTIES

Plaintiff's Contentions:

Husky contends that defendant Ritz is individually liable for the **$163,999.38** in contractual obligations of Chrysalis Manufacturing Corp. (plus attorney's fees) to plaintiff Husky on the following grounds:

(i) As a Chrysalis shareholder, Ritz can be held liable for the **$163,999.38** in contractual obligations of Chrysalis if Ritz caused Chrysalis to be used for the purpose of perpetrating and did perpetrate an actual fraud on Husky for Ritz's direct personal benefit. TEX. BUS. ORG. CODE §21.223(b). Chrysalis' fraudulent transfer of some or all of

the approximately $1.2 million transferred to other Ritz corporations in 2006 and 2007 was in actual fraud against the rights of Husky and personally benefitted Ritz.

(ii) As an officer and director of Chrysalis, defendant Ritz had a fiduciary duty to plaintiff Husky (and other Chrysalis creditors) once Chrysalis became insolvent. Chrysalis' fraudulent transfers totaling approximately $1.2 million to other Ritz corporations and Ritz's father instead of paying the **$163,999.38** owed to Husky was a breach of that fiduciary duty for which Ritz is individually liable.

(iii) A fiduciary duty is owed by the officers and directors of an insolvent corporation to the corporation's creditors—and a cause of action for breach of such a fiduciary duty will lie—despite the enactment of TEX. BUS. ORG. CODE §21.223(b) in 1999.

(iv) Attorney's fees are recoverable in a bankruptcy adversary proceeding.

(v) Claims arising from fraud and breach of fiduciary duty are nondischargeable in bankruptcy under Bankruptcy Code §523.

Defendant's Contentions:

Defendant contends that:

Fraud.

1. He did not participate in, authorize or have any knowledge of the bad checks issued to Plaintiff.

2. He did not engage in any conduct that would constitute fraud.
3. He did not benefit from any conduct that Plaintiff alleges he has committed.
4. Plaintiff's fraud claims are limited to the statutory fraud claims alleged pursuant to Tex. Bus. Org. Code §21.223(b). All claims based on breach of contract, quantum meruit, common law fraud and breach of fiduciary duty have been displaced by § 21.223(a)(2). The limitation of liability specified in Tex. Bus. Org. Code § 21.223(a)(2) has been applied to persons who are shareholders while simultaneously acting as a director. *See*, *Willis v. Donnelly*, 199 S.W.3d 262, 265 (Tex. 2006), which held that Tex. Bus. Org. Code § 21.223(a)(2) prevented the use of the common law theory of breach of fiduciary against a defendant who was simultaneously both a shareholder and served as a director of the corporate entity.

Quantum Meruit. Plaintiff is not entitled to recover under any theory of quantum meruit. Defendant is not personally liable under this theory because:

1. All goods provided by Plaintiff were ordered, obtained and used by Chrysalis, not Defendant.
2. Defendant did not gain any personal benefit from the goods provided by Plaintiff.

Breach of Fiduciary Duty. Defendant did not commit any breach of fiduciary duty because:

1. As a matter of law, as a result of Tex. Bus. Org. Code § 21.223(a)(2) and (b), Plaintiff's breach of fiduciary duty claims have no application.
2. The Texas Supreme Court opinion issued in *Willis v. Donnelly*, 199 S.W.3d 262, 265 (Tex. 2006), has held that Tex. Bus. Org. Code § 21.223(a)(2) prevents the use of the common law theory of breach of fiduciary against a defendant who is both a shareholder and serves as a director of the corporate entity.
3. Even if breach of fiduciary duty is available as a legal theory, Plaintiff suffered no damages.

Punitive Damages. Defendant is not entitled to recover punitive damages because Plaintiff has not plead, and Defendant has not committed, any intentional, willful or malicious conduct that would permit Plaintiff to recover punitive damages.

Attorney's Fees. Plaintiff may not recover attorney's fees because attorney fees are only recoverable under claims couched under a legal theory based upon breach of contract. The contract claims asserted by Plaintiff, even if viable and applicable to Defendant, are not rendered non-dischargeable by BC § 523.

V. ADMISSIONS OF FACT

1. Defendant Daniel Lee "Bo" Ritz, Jr., is a natural person residing in Houston, Harris County, Texas. (Ritz's November 26, 2010, Admission of Fact No. 1.)

2. At all relevant times, Altatron EMS was an assumed name of Chrysalis Manufacturing Corp., and the two entities are the same.
3. At all relevant times, Ritz was a director of Chrysalis.
4. At all relevant times, Ritz owned approximately 30% of Chrysalis' common stock.
5. Chrysalis was a manufacturer of electronic circuit boards and other devices. (Ritz's November 26, 2010, Admission of Fact No. 4.)
6. Husky and Chrysalis entered into a Master Credit and Sales Agreement dated December 17 2003, pursuant to which Chrysalis periodically purchased parts from Husky until 2006. (Ritz's answers to R/A 16 and 18; Ritz's November 26, 2010, Admission of Fact No. 5 and 7.)
7. Chrysalis received the goods described in plaintiff Husky's complaint as having been sold and delivered by Husky. (Ritz's answer to R/A 11.)
8. All goods provided by Husky were ordered, obtained, and used by Chrysalis, not Ritz.
9. Between November 2006 and May 2007, Ritz caused **$172,100.00** to be transferred from Chrysalis to Institutional Insurance Management, Inc. (Ritz's answer to R/A 5.)
10. At all relevant times, Ritz owned **100%** of Institutional Insurance Management, Inc. (Ritz's admission in answer to Husky's complaint.)

11. Between November 2006 and May 2007, Ritz caused **$121,821.00** to be transferred from Chrysalis to CapNet Securities Corporation. (Ritz's answer to R/A 3.)

12. At all relevant times, Ritz owned approximately **85%** of CapNet Securities Corporation. (Ritz's admission in answer to Husky's complaint.)

13. Between November 2006 and May 2007, Ritz caused **$11,240.00** to be transferred from Chrysalis to CapNet Advisors, Incorporated. (Ritz's answer to R/A 9.)

14. Chrysalis issued Check No. 1993 in the amount of **$18,433.66** dated October 31, 2006, payable to Husky which was returned "NSF." (Ritz's November 26, 2010, Admission of Fact No. 9.)

15. Chrysalis issued a check in the amount of **$10,505.25** dated November 1, 2006, payable to Husky which was returned "NSF." (Ritz's November 26, 2010, Admission of Fact No. 9.)

16. Chrysalis issued a check in the amount of **$14,025.00** dated November 14, 2006, payable to Husky which was returned "NSF." (Ritz's November 26, 2010, Admission of Fact No. 9.)

17. Chrysalis issued a check in the amount of **$23,559.48** dated December 19, 2006, payable to Husky which was returned "NSF." (Ritz's November 26, 2010, Admission of Fact No. 9.)

18. Chrysalis issued a check in the amount of **$40,000.00** dated December 22, 2006, payable

to Husky which was returned "NSF" (Ritz's November 26, 2010, Admission of Fact No. 9.)

19. Chrysalis filed for bankruptcy on June 12, 2008. (Ritz's November 26, 2010. Admission of Fact No. 8.)

VI. CONTESTED ISSUES OF FACT

Plaintiff's Contested Issues of Fact:

1. The dollar amount of goods Chrysalis received from plaintiff Husky but for which Chrysalis never paid.
2. Whether Ritz used Chrysalis to perpetrate an actual fraud on Husky for Ritz's direct personal benefit.
3. Whether defendant Ritz was in financial control of Chrysalis.
4. Whether the transfers of $1.2 million of Chrysalis funds to defendant Ritz's other companies in a 6-month period in 2006 and 2007 (while Chrysalis owed **$163,999.38** to plaintiff Husky) were fraudulent as to the rights of Husky.
5. Whether Chrysalis was insolvent at the time the transfers were made.

Defendant's Contested Issues of Fact:

The contested issues of fact, as understood by Defendant, are as follows:

Statutory Liability - Actual Fraud. Whether Defendant: **(1)** committed an actual fraud on Plaintiff; and **(2)** directly and personally benefitted from any such conduct.

Breach of Fiduciary Duty. Whether: **(1)** Chrysalis was insolvent; **(2)** if Chrysalis was insolvent, the point in time at which the insolvency arose; **(3)** Defendant had a fiduciary duty towards Plaintiff; and **(4)** Plaintiff suffered any damages.

Punitive Damages. Whether Defendant engaged in any intentional, willful and/or malicious conduct that would warrant the imposition of punitive damages.

VII. AGREED APPLICABLE PROPOSITIONS OF LAW

1. A shareholder of a corporation can be held liable for the contractual obligations of the corporation if the shareholder caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on another for the shareholder's direct personal benefit. TEX. BUS. ORG. CODE §21.223(b).

VIII. CONTESTED ISSUES OF LAW

Plaintiff's Contested Issues of Law:

1. Whether Ritz should be permitted to use documents or evidence not disclosed in compliance with FED. R. CIV P 26(a).

2. Whether a fraudulent transfer of funds to a corporate entity can be a "direct personal benefit" to an owner of all or part of that entity within the meaning of TEX. BUS. ORG. CODE §21.223(b).

3. Whether a fiduciary duty exists from the officers and directors of an insolvent corporation to the corporation's creditors.

4. Whether a plaintiff in a bankruptcy adversary proceeding may recover attorney's fees from the defendant.

Defendant's Contested Issues of Law:

1. Whether Plaintiff's fraud and breach of fiduciary duty claims have been legally displaced by Tex. Bus. Org. Code § 21.223(a)(2), and limited to the statutory fraud claims specified in Tex. Bus. Org. Code § 21.223(b).
2. Whether the legal theory of quantum meruit can be used to impose personal liability upon Defendant for the goods sold by Plaintiff to Chrysalis.
3. Whether Plaintiff is entitled to recover attorney fees in a dischargeability suit filed pursuant to BC § 523.

IX. EXHIBITS

Plaintiff: One set of Husky's trial exhibits in the required 3-ring notebook was transmitted to a courier for delivery to chambers no later than 9:00 AM January 24, 2011.

Defendant: Defendant's Exhibit List is attached hereto.

X. WITNESSES

Plaintiff's Witnesses

1. Mr. Nick Davis

   Husky International Electronics, Inc.

   6725 Powell Street

   Loveland, Colorado 80538\

   Estimated Time for Direct Examination:

   2 Hours.

Davis, president of Husky, will testify to the business relationship between Husky and Chrysalis; the dollar amount of product sold and delivered by Husky to Chrysalis for which Chrysalis did not pay; the settlement of Husky's claims which Chrysalis did not perform; and may relate these facts to other facts established by any admitted exhibits for context and clarity.

2. Mr. Mike Bernard

   Husky International Electronics, Inc.

   6725 Powell Street

   Loveland, Colorado 80538

   Estimated Time for Direct Examination:

   1 Hour.

   Husky's vice president of operations will testify to the business relationship between Husky and Chrysalis; the dollar amount of product sold and delivered by Husky to Chrysalis for which Chrysalis did not pay; and the settlement of Husky's claims which Chrysalis did not perform.

3. Mr. Daniel Lee "Bo" Ritz, Jr.

   15721 Park Row, Suite 100

   Houston, Texas 77084

   Estimated Time for Direct Examination:

   4 Hours.

   Defendant Ritz will be called to testify by both deposition and live regarding all matters in controversy in the case.

4. Ms. Nancy Finney, CPA

   565 South Mason Road

   Katy, Texas 77450

   Estimated Time for Direct Examination:

   .50 Hours.

   Finney, former controller and CPA for Chrysalis, will testify to her job responsibilities of moving money from entity to entity in the "Ritz Empire" of companies; that defendant Ritz was always in complete financial control of Chrysalis; and that Ritz directly benefited from monies transmitted from Chrysalis to Institutional Insurance Management because Ritz "lived off of" Institutional Insurance Management.

5. Mr. James David Rogers

   9322 Fairdale Lane

   Houston, Texas 77063

   Estimated Time for Direct Examination:

   .50 Hours.

   Rogers, former CFO and vice president of several of the "Ritz Empire" of companies, will testify that defendant Ritz took no salaries from the companies in the "Ritz Empire" because he "did not like to pay taxes;" instead Ritz took "loans" from his companies, which were periodically forgiven; this was a direct benefit to Ritz enabled by the transfers of cash from Chrysalis to Institutional Insurance Management and others.

6. Mr. Richard Lynn Hollan

1519 Emerald Green Boulevard

Houston, Texas 77094

Estimated Time for Direct Examination:

2.00 Hours.

Hollan, former business associate of defendant Ritz, is expected to testify that Ritz was in absolute financial control of Chrysalis, and misappropriated Chrysalis funds for himself using the conduits of other Ritz companies.

7 Mr. Bob Leahy

70 Hillover Lane

Sag Harbor, New York

1196302328 Estimated Time for

Direct Examination: .50 Hours.

Leahy, former officer of Chrysalis, is expected to testify that he did not order or participate in any transfers of cash from Chrysalis to other Ritz entities, and that all such transfers were directed by Ritz.

8. Mr. Marlin Williford

20019 Sky Hollow Lane

Katy, Texas 77450

Estimated Time for Direct Examination:

.20 Hours.

Williford will testify that Ritz was always in complete financial control of Chrysalis.

9. Mr. James B. McElravy, CPA

8820 Will Clayton Parkway, Suite G

Humble, Texas 77338

Estimated Time for Direct Examination:

.20 Hours.

McElravy will testify that Ritz was always in complete financial control of Chrysalis.

10. Ms. Carrie Cogburn

Vice President and Assistant General Counsel

Amegy Bank

P.O. Box 27459

Houston, Texas 77227-7459

Estimated Time for Direct Examination:

3.00 Hours.

The witness will testify as custodian of records for Amegy Bank if Ritz does not stipulate to admissibility of the bank statements he produced.

11. Rene Gomez

Custodian of Records,

Prosperity Bank

777 Walker, Suite 140L

Houston, Texas 77002

Estimated Time for Direct Examination:

.50 Hours.

The witness will testify as custodian of records for Prosperity Bank if Ritz does not stipulate to admissibility of the bank statements he produced.

Defendant's Witnesses

See the attached "Defendant's First Amended Witness List (Trial)."

XI. SETTLEMENT

Prospects for settlement do not appear good.

XII. ESTIMATED TRIAL TIME

Plaintiff: Plaintiff Husky estimates four and one-half days for trial.

Defendant: Defendant estimates the time required for trial will be approximately 12 to 16 hours.

XIII. ATTACHMENTS

Include the following REQUIRED attachments FOR EACH PARTY:

a. Proposed findings of fact and conclusions of law, with supporting authorities in a memorandum of law;

b. Exhibit Lists (2 copies);

c. Objections to Exhibits (2 copies); and

d. Witness Lists (2 copies).

By our signatures below, each of us understands that failure to adhere to the Court's requirements relating to the Joint Pretrial Statement may result in sanctions being imposed.

ESCAMILLA, PONECK & CRUZ, LLP

By: /s/ Jeffrey L. Dorrell

Jeffrey L. Dorrell

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By: /s/ William D. Weber (By Permission/JLD)
William D. Weber
TBA# 21045500
Fed. Iden. #6578

ATTORNEY IN CHARGE FOR: DEFENDANT

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DANIEL LEE RITZ, JR., a/k/a BO RITZ **Debtor**	§ § § §	**CASE NO. 09-39895** **CHAPTER 7**
HUSKY INTERNATIONAL ELECTRONICS, INC., **Plaintiff** **vs.** **DANIEL LEE RITZ, JR.,** **Defendant**	§ § § § § § § § §	**ADVERSARY PROCEEDING NO. 10-03156**

PLAINTIFF HUSKY INTERNATIONAL ELECTRONICS, INC.'S MEMORANDUM OF LAW ON CONTESTED LEGAL ISSUES

* * *

[Page 4]

Issue 2: Whether a Fraudulent Transfer of Funds to a Corporate Entity Can Be a "Direct Personal Benefit" to an Owner of All or Part of That Entity Within the Meaning of TEX. BUS. ORG. CODE §21.223(b)

7 Individual shareholders cannot be held liable for corporate debts except in narrowly prescribed circumstances. ***Willis v. Donnelly***, 199 S.W.3d 262, 271-72 (Tex. 2006); see TEX. BUS. ORGS. CODE § 21.223(a) (previously codified at TEX. BUS. CORP. ACT art. 2.21(A). Liability of a shareholder under section

21.223 is exclusive and preempts any other liability imposed for that obligation under common law or otherwise." *Id.* § 21.224. The only exception to this rule pertinent in the case at bar is where the shareholder "caused the corporation to be used for the purpose of perpetuating and did perpetuate an actual fraud on the obligee primarily for the direct personal benefit of the shareholder." *Id.* §21.223(b).

8. Courts have often had to decide whether an alleged benefit is a "direct personal benefit" allowing imposition of personal liability upon a shareholder under the exception of §21.223(b). These have included the fraudulent transfer of assets to a corporation owned 100% by the individual defendant, as occurred in the case at bar. ***Nick Corp. v. JNS Aviation, Inc. (In re JNS Aviation, LLC)***, 376 B.R. 500 (Bankr. W.D. Tex., 2008). They have also included direct ownership and/or financial interest in various corporate entities that received diverted sums due to another undercapitalized entity. ***McCarthy v. Wani Venture, A.S.***, 251 S.W.3d 573, (Tex. App.—Houston [1st Dist.] 2007, pet denied). "Any benefit" bestowed on the company is a personal benefit to the majority owner and controller. ***David W. Morrison W. Builders of Amarillo, Inc. v. Morrison (In re David W. Morrison W. Builders of Amarillo, Inc.)***, 361 B.R. 107, 2007 Bankr. LEXIS 342 (Bankr. W.D. Tex., 2007) (applying article 2.21(A)(2) and concluding that majority stockholder received direct personal benefit). At least one court found a direct personal benefit justifying imposition of personal liability when oil well operating expenses were reallocated to oil wells in which defendant shareholder "owned a small percentage," thereby

reducing his level of expenses. ***Cass v. Stephens***, 156 S.W.3d 38, 60 (Tex. App.—El Paso 2004, pet. denied).

9. Despite the statute's use of the phrase "direct personal benefit," it is not necessary that Ritz have transferred Chrysalis money to himself or purchased assets for his own use for Ritz to have perpetrated a fraud on Husky for his "direct personal benefit."

Issue 3: Whether a Fiduciary Duty Exists From the Officers and Directors of an Insolvent Corporation to the Corporation's Creditors

10. As a general rule, corporate officers and directors owe fiduciary duties only to the corporation and not to the corporation's creditors, unless there has been prejudice to the creditors. *See* ***Martin v. Kagan (In re Tufts Elecs., Inc.)***, 746 F.2d 915, 917 (1st Cir. 1984). However, when a corporation is insolvent, a fiduciary relationship arises between the officers and directors of the corporation and its creditors, and creditors may challenge a breach of the duty. *See id.*; ***Dyer v. Shafer, Gilliland, Davis, McCollum & Ashley, Inc.***, 779 S.W.2d

* * *

4:11-CV-3020

IN THE

UNITED STATES DISTRICT COURT

For the Southern District of Texas

Sitting at Houston

In re

DANIEL LEE RITZ, JR.,

Debtor-Appellee

U.S. Bankruptcy Court Case No. 09-39895-H4-7; Adversary No. 10-03156

Appeal From August 4, 2011, Judgment Relating to Complaint to Deny Dischargeability Entered by Hon. Jeff Bohm, U.S. Bankruptcy Court

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APPELLANT'S REPLY BRIEF

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* * *

[Page 10]

E. Ritz's Debt to Husky is Nondischargeable Under § 523(a)(2) Because Ritz Obtained Husky's Property By Fraudulent Transfer to Himself

It is difficult to determine precisely what Ritz's argument is on this point, but Ritz captions his argument with this:

5. Husky's § 523(a)(2) claim fail fails (sic) as a matter of law because the property obtained by *Chrysalis* was not obtained as a result of any fraudulent conduct.

Ritz's Brief, p. 21 (emphasis added). This caption is unfathomable, given that Husky has never contended that Chrysalis fraudulently obtained any property.

Ritz's error likely derives from his assumption that in order to make the debt to Husky nondischargeable, Ritz's fraud could only have occurred at the inception of the commercial debt from Chrysalis to Husky. This is incorrect. See ***McClellan***, 217 F.3d at 895. The Bankruptcy Code defines "debt" very broadly, as "liability on a claim," 11 U.S.C. § 101(12), and "claim" very broadly, as any "right to payment," whether liquidated or unliquidated, disputed or undisputed, legal or equitable. § 101(5); *see generally* ***Johnson v. Home State Bank***, 501 U.S. 78, 83-84 and n.5 (1991). The debt in the case at bar debt need not, therefore, arise from the commercial transaction between Husky and Chrysalis. As in McClellan, the original debt is not the debt at issue here. *Id.* As the ***McClellan*** court wrote:

> **The debt at issue here is the debt that the sister incurred to McClellan by committing a fraud against him. Because it was an actual fraud, the debt that it gave rise to is not dischargeable.**

* * *